Neutral Citation Number: [2012] EWHC 1296 (QB)

Case No: HQ10D03060

**IN THE HIGH COURT OF JUSTICE**
**QUEEN'S BENCH DIVISION**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24/05/2012

**Before**:

**THE HONOURABLE MR JUSTICE TUGENDHAT**

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**Between:**

| | |
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| **Carina Trimingham** | **Claimant** |
| **- and -** | |
| **Associated Newspapers Limited** | **Defendant** |

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**Matthew Ryder QC & William Bennett** (instructed by **Mishcon de Reya**) for the **Claimant**
**Antony White QC & Alexandra Marzec** (instructed by **Reynolds Porter Chamberlain LLP**) for the **Defendant**

Hearing dates: 23,24,25,26,27 April 2012

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# Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HONOURABLE MR JUSTICE TUGENDHAT

## Mr Justice Tugendhat :

1. By claim form issued on 11 August 2010 the Claimant ("Ms Trimingham") complained that the Defendant had wrongfully published private information concerning herself in eight articles.

2. Mr Christopher Huhne MP had been re-elected as the Member of Parliament for Eastleigh in Hampshire at the General Election held in May 2010, just over a month before the first of the articles complained of. He became Secretary of State for Energy in the Coalition Government. He was one of the leading figures in the Government and in the Liberal Democrat Party. In 2008 Ms Trimingham and Mr Huhne started an affair, unknown to both Mr Huhne's wife, Ms Pryce, and Ms Trimingham's civil partner. By 2008 Mr Huhne had become the Home Affairs spokesman for the Liberal Democrats. At that time he had been married to Ms Pryce for almost 25 years. They had five children, three together, and two from Ms Pryce's first marriage. Until 20 June 2010, Ms Trimingham was living with her civil partner.

3. As a result of the disclosure of the relationship between Mr Huhne and Ms Trimingham, Mr Huhne and Ms Pryce separated and subsequently divorced. Ms Trimingham's relationship with her civil partner had concluded in October 2009, but they continued to share a flat together until June 2010.

4. On Saturday 19 June 2010 reporters from *The People* newspaper stopped Ms Trimingham and Mr Huhne at Waterloo Station, where they had arrived together from his constituency. They put to Mr Huhne that he was having an affair. That evening Mr Huhne released a short statement saying: "I am in a serious relationship with Carina Trimingham and I am separating from my wife". Ms Trimingham made no public statement and took down her Facebook page and Twitter account.

5. The eight articles Ms Trimingham complained of in August 2011 were as follows:

    1. "Lib Dem minister Chris Huhne pictured with his mistress hours before he admitted cheating on his wife of 26 years", Mail on Sunday 20 June 2010.

    2. "Chris Huhne's bisexual lover: Life and very different loves of the PR girl in Doc Martens" by Barbara Davies, Daily Mail 21 June 2010.

    3. "First picture of Chris Huhne's lover and the lesbian civil partner she has left broken-hearted" by Barbara Davies, Daily Mail 22 June 2010.

    4. "It's Chris Huhne's hypocrisy and lies that matter, not his sex life" by Richard Littlejohn, Daily Mail 22 June 2010.

    5. "Cheat on my wife? Nothing like that will ever emerge? What hypocrite Huhne told the voters in 2007" by Sam Greenhill and Katherine Faulkner, Daily Mail 23 June 2010.

    6. "Huhne, Hughes and their very Liberal lover" by Richard Kay, Daily Mail 24 June 2010.

7. "Did Huhne's wife lose her job over his affair?" by Sam Greenhill, Daily Mail 24 June 2010.

8. "Chris Huhne's 'shocked' wife instructs divorce lawyers on the grounds of 'admitted adultery'", by Michael Seamark, Daily Mail, 1 July 2010.

6. Following three amendments to her Particulars of Claim, Ms Trimingham now sues for infringement of her rights to privacy under three separate statutes. Her first two claims, in the claim form issued in August 2010, were for interference with her privacy right under the Copyright Designs and Patent Act 1988 s.85 ("CPDA"), in respect of two photographs, and for misuse of private information pursuant to the Human Rights Act 1998 ("HRA") and ECHR Art 8 ("right to respect for private life"). Her third claim, which was added by amendment in October 2011, is under the Protection from Harassment Act 1997 ("PHA").

7. On 4 October 2011, permission was given to extend the claim in misuse of private information to cover 39 articles dated on and after 25 September 2010 published in the print edition of the *Daily Mail*, and Mail Online. These are listed in a Schedule of Further Publications headed "Articles containing offensive references to Ms Trimingham … excluding the original 8 articles complained of").

8. By a further amendment made by consent on 13 October 2011, the claims in misuse of private information and harassment were based on the original 8 articles, plus 57 articles from 21 June onwards (a total of 65 articles).

9. The Re-re-Amended Particulars of Claim also include a claim in respect of a Schedule of Readers' Comments which she pleads "taunt and lampoon the Claimant for being ugly and attack her in regard to her sexuality".

RELIEF CLAIMED

10. The relief claimed in this action is damages including aggravated damages and an injunction. The form of the injunction in the Statement of Case is:

> "To restrain the Defendant … from further publishing or causing or permitting the publication of (a) photographs concerning the Claimant's civil [partnership] ceremony; (b) information of the type set out in paragraphs 8.1 to 8.5 above and (c) [added by re-re-amendment by order dated 29 November 2011] information to the effect that the Claimant is ugly and has a masculine appearance".

11. In his skeleton argument dated 19 April 2011 the form of injunction Mr Ryder seeks is as follows:

> "The Defendant shall not harass the Claimant. The Defendant shall also refrain from further publication that makes direct or indirect reference to the Claimant's sexual orientation, unless such reference is relevant beyond the mere fact of her current

> relationship with Mr Huhne and her separation from her former partner. ”

12. Since the injunction sought would affect the Convention right to freedom of expression of the Defendant and the journalists who wrote the articles, the HRA s12 applies. That section includes the following:

> "12(1) This section applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the Convention right to freedom of expression…
>
> (3) No such relief is to be granted so as to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that publication should not be allowed.
>
> (4) The court must have particular regard to the importance of the Convention right to freedom of expression and, where the proceedings relate to material which the respondent claims, or which appears to the court, to be journalistic, literary or artistic material (or to conduct connected with such material), to-
>
> (a) the extent to which-
>
> (i) the material has, or is about to, become available to the public; or
>
> (ii) it is, or would be, in the public interest for the material to be published;
>
> (b) any relevant privacy code….”

13. The right to freedom of expression is set out in the ECHR as follows:

> *“Article 10 freedom of expression*
>
> (1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority ...
>
> (2) The exercise of these freedoms since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society … for the protection of health or morals, for protection of the … rights of others, for preventing the disclosure of information received in confidence ...”

14. The provision which Ms Trimingham submits is a relevant privacy code is the Editors’ Code of Practice ratified by the Press Complaints Commission (commonly known as the PCC Code). Clause 12 is headed “Discrimination” and reads as follows:

> "1. The press must avoid prejudicial or pejorative reference to an individual's race, colour, religion, gender, sexual orientation or to any physical or mental illness or disability.
>
> 2. Details of an individual's race, colour, religion, sexual orientation, physical or mental illness or disability must be avoided unless genuinely relevant to the story."

15. There appear to me to be difficulties about the form of the injunction sought, since injunctions have to have the clarity required of a provision which may be enforced by proceedings for contempt of court. But in the event I have not had to consider this point.

THE PARTIES

16. The Defendant is the publisher of the *Daily Mail* and *The Mail on Sunday* newspapers and of the website Mail Online. Both those titles and the website enjoy a very substantial circulation and readership within this jurisdiction.

17. In her Particulars of Claim Ms Trimingham states this about herself:

> "The Claimant is a private individual. On 16 June 2007 she entered into a civil partnership".

18. In the Skeleton argument for the trial in October 2011 she adds that "she has been involved in political campaigns but in the 'backroom' as a 'party worker'". She identifies the campaigns of Mr Huhne to be party leader ending in December 2007, of Mr Paddick to become Mayor of London in May 2008 and of Mr Huhne during the general election campaign in May 2010.

19. In evidence she stated that she has worked in the field of journalism, communications and public relations for over 20 years. She accepted that her role in each of the three campaigns she had identified was press officer. At the time of the general election in 2010 she was the campaigns director for the Electoral Reform Society. But she was on secondment from that position to work in Mr Huhne's campaign, and was frequently at his side during the election campaign. She had also been on the staff of Lord Rennard the Liberal Democrat's Constitutional Affairs spokesman in the House of Lords. She had advised him on constitutional affairs and electoral reform. During her career she had been a political journalist for some 12 years between 1988 and 2000. She had advised a number of Liberal Democrats on how to deal with the press in addition to those already named. She has also offered advice through Midas Training through the website of that organisation. She has not herself ever been a candidate for public office or held a public office. In 1999 Ms Trimingham had married a Mr W, but that marriage had broken down soon afterwards, and subsequently ended in divorce.

20. On Sunday 20 June the story of Ms Trimingham's and Mr Huhne's affair was published in *The People*, and by the Defendant in *The Mail on Sunday*. The title on the front page of *The People* included: "Yes… Yes… Yes Minister! The story they all wanted … the picture they all wanted. We catch dad-of-5 Huhne & mistress. Affair with Press aide ends 26-year marriage".

21. The title on the front page of *The Mail on Sunday* is set out above. The story was the only news story on the front page and covered the whole of pages 6 and 7 of the *The Mail on Sunday*.

22. Although the articles are highly defamatory of Ms Trimingham, she makes no claim for libel. There could be no claim in libel by Ms Trimingham, because she does not dispute that what was published about her was substantially true. The main point of Ms Trimingham's complaint is the repeated references to her sexuality and appearance. In her fourth witness statement dated 9 March 2012, she complains that the articles are "intrusive" and "hurtful" (in particular the two on 21 and 22 June by Barbara Davies), she states that "the Defendant ought to have known that its course of conduct would amount to harassment", identifying that as "relentless and irrelevant homophobic comments over many months", she says she has been humiliated and ridiculed, and this has had a destructive effect on her confidence and day to day life, both emotionally and professionally. These are her words. I shall refer to what she claims to have suffered as her distress.

23. Ms Trimingham does not complain of the disclosure of the fact she had been married to Mr W, nor of the fact that until 20 June she was living with another woman. The fact of her marriage, and the fact that she was living with another woman, is each published in *The Mail on Sunday* on page 7 of its edition of 20 June, and online. But Ms Trimingham does complain that, starting on 21 June, the *Daily Mail* and *The Mail on Sunday* contain repeated references to her being "bisexual" or "lesbian", and descriptions of her personal appearance she alleges to be stereotypes of a lesbian or bisexual woman. She also complains that, starting on 22 June, the articles also disclose or refer to her having entered into a civil partnership.

24. On page 7 of *The Mail on Sunday* of 20 June (an article of which she makes no complaint) there are nine short paragraphs about Ms Trimingham and her career headed "Spiky-haired PR boss whose youthful looks mask a core of steel". None of the photographs published in the print editions that day show Ms Trimingham with a spiky hair style: the photos in *The People* show her with hair cut below the level of her ear, and the photo in *The Mail on Sunday* shows it short and lying flat. But the article on page 7 includes: "[she] is said to wear her short, dark hair in spikes to accentuate her youthful looks".

THE PHOTOGRAPHS COMPLAINED OF

25. The online edition of *The Mail on Sunday* is different from the print edition. There are a number of photographs. One of the photographs published online on 20 June is the first of the two photographs Ms Trimingham complains of. It has been referred to as "the wedding portrait photograph". As published online on 20 June it appears under the title "Spiky-haired PR boss whose youthful looks mask a core of steel". It is a picture of her head and shoulders. She is shown smartly dressed and smiling towards the camera, with short hair in a style which can be described as spiky. It was in fact a photograph taken of Ms Trimingham at her request by Mr Allan. She was in her home, prior to going to her civil partnership ceremony in June 2007. Mr Allan is a professional photographer and a personal friend. Ms Trimingham complains of the fact that the wedding portrait photograph was published by the Defendant on two occasions in all: June 20$^{th}$ and 24$^{th}$ (when the photograph is cropped to show Ms

Trimingham to the waist). Before she removed it, anyone who looked for Ms Trimingham on Facebook could see the photograph displayed on it.

26. The second of the two photographs which are the subject of complaint is referred to as "the wedding party photograph". This was first published online on 22 June. It too was taken by Mr Allan. It is a photograph of Ms Trimingham with her civil partner and family members at their civil partnership ceremony. It was published in the print edition of the *Daily Mail* on 22 June. It shows Ms Trimingham and her civil partner in smart dresses and smiling into the camera. The portrait shows them down to knee level. Ms Trimingham has, of course, the same hairstyle as in the wedding portrait photograph. Ms Trimingham complains that the wedding party photograph was published by the Defendant on 4 occasions in all: June 22nd, 23rd (cropped to show only Ms Trimingham's head), 24th (cropped to show not only Ms Trimingham and her civil partner, but also two other people standing one at the left of the photo and one at the right), July 1st (cropped to show Ms Trimingham, her civil partner, and a third person standing to the left of the photo next to Ms Trimingham's civil partner).

THE ARTICLES COMPLAINED OF

27. Ms Trimingham complains about more articles than the eight listed at the start of this judgment. The trial of this action started in October 2011. It was adjourned on the second day to enable Ms Trimingham to amend her Particulars of Claim. She had already amended her Particulars of Claim on 23 May 2011 pursuant to CPR r.17.1(2)(a); she re-amended them by order dated 11 November 2011, and re-re-amended them by order dated 22 November 2011.

28. By the amendment on 23 May she introduced at para 10.7A a complaint about the inclusion in the 21 June article of details concerning her parents' divorce and the description of her upbringing having been "far from stable". She also introduced at para 9A the allegation that the 8 articles complained of "taken together as well as individually breach[ed] her reasonable expectation of privacy".

29. By the re-amendment on 4 October 2011 (on the second day of the trial) Ms Trimingham complained of 39 articles published from 25 September 2010. It was at this stage that she also introduced her claim under the PHA. This was based on the repeated publication of the articles already relied on as misuse of private information, and repeated publication of information to the effect that she is ugly and of masculine appearance both in articles and in readers' comments. She claimed her distress had been increased by the cumulative effect of the 47 articles (the original 8 plus the 39) about which she now complained. It was at this stage that she introduced an allegation that the Defendant had been in breach of the Editors' Code of Practice.

30. By the re-re-amendment of 13 October 2011 Ms Trimingham increased the number of articles she complained of in addition to the original 8 from 39 to 57, and included amongst these articles published on and after 21 June 2010. These 57 are set out in a schedule. The first is dated 21 June 2010 and the last 3 October 2011. Publication 40, dated 29 May 2011, was written by Amanda Platell. Publication 57, dated 3 October 2011, was written by Janet Street-Porter. Ms Trimingham complains that two articles in the list, numbers 27 and 55 contain attacks on her sexuality which reduced her to a crude stereotype and played upon homophobic prejudice (in addition to the two original articles of 21 and 22 June, about which she made the same

complaint, thus making four articles in all complained of on this basis). She complains that three in the list, numbers 14, 17 and 38, dated 11 January 2011, 6 February 2011 and 26 May 2011, include information about her sexual and relationship history. Articles 14 and 17 are attributed to an unnamed Daily Mail reporter. Article 38 dated 26 May was by Richard Kay. Article 27 dated 8 May was by Simon Walters and article 55 dated 21 September 2011 by Quentin Letts.

31. Each of the 57 articles is alleged to be a misuse of private information, that is information in respect of which Ms Trimingham had a reasonable expectation of privacy. In relation to 55 of these articles her complaint is that they disclose private information about her sexuality.

32. The articles complained of were published on dates which can be grouped as follows:

i) between 20 June to 1 July when the story of her affair with Mr Huhne broke: the original 8 articles, plus a further 6 added by re-amendment. The parts of the further 6 of which complaint is made are the inclusion in them of the following words: June 21st ("bisexual mistress … crop haired … She wore her sexuality on her sleeve"), 22nd ("stern bisexual PR woman"), 23rd ("bisexual who in 2007 married her lesbian partner"), 25th (two articles: "ex lesbian mistress" and "bisexual press officer") and 26th ("former lesbian") written by Amanda Platell;

ii) around the time of the Liberal Democrats' conference: on 25th September 2010 ("bisexual lover" written by Amanda Platell), about Mr Huhne and Ms Trimingham attending a dinner for a foreign head of state, on 28 October 2010 ("bisexual" in the Ephraim Hardcastle column), about the hanging of royal portraits in Mr Huhne's office, on 21 November 2010 ("former lesbian"), and about Mr Huhne joining a gym, on 6 December 2010 ("bisexual lover");

iii) around the time of Mr Huhne's divorce: on December 12th ("bisexual aide"), January 9th ("bisexual spiky haired"), January 11th, 23rd and 29th, February 6th and 19th (all of these included the word "bisexual");

iv) around the time of the Liberal Democrats' Spring 2011 conference: on March 13th and 14th (these included the word "bisexual"); and

v) following a comment made by Mr Huhne about a Conservative Minister: on 5 April 2011 including the word "bisexual" and written by Andrew Pierce;

vi) in 2011 when there was public discussion of a book to be written by Ms Pryce and allegations concerning a driving offence said to have been committed by Mr Huhne: on April 20th ("bisexual"), and May 6th (two articles including "ex-lesbian" and "bisexual"), 8th ("Doc Marten wearing former lesbian"), 9th ("bisexual" by Janet Street-Porter), 15th (two articles "former lesbian" and, twice, "bisexual"), 16th, 17th, 18th, 19th, 20th, 21st (two articles, one by Amanda Platell), 22nd, 23rd , 26th (two articles), 29th – all of these using the word "bisexual" - plus a second article on 29th May, by Amanda Platell, referring to Ms Trimingham's civil partnership, and her appearance set out below, and the

following, in all of which the word "bisexual" appears, June 1st, 27th (by Kirsty Walker), 28th, 30th, July 2nd, 4th, 10th, 23rd, August 9th, 18th, 31st, September 8th.

vii) about the Liberal Democrats' 2011 conference: on September 20th (including "bisexual"), 21st (two articles, one by Kirsty Walker including "bisexual" and the other a sketch by Quentin Letts), October 3rd by Janet Street-Porter comparing Ms Trimingham's appearance to that of the puppet Wendolene in the Wallace and Gromit film series.

33. In the extracts set out below paragraph numbers are added and the words underlined are the passages set out in the Particulars of Claim to identify specific words complained of.

34. The 21 June 2010 article extends over pages 4 and 5 of the newspaper. At the top of the page there are two photographs, one taken on 19 June at Waterloo station and previously published in *The People* and *The Mail on Sunday*. The second is a photograph taken at the civil partnership ceremony of Mr Paddick (who appears on the right), his civil partner, (who appears on the left) and Ms Trimingham and her civil partner who stand between them. All four are posing smartly dressed smiling to the camera and can be seen from the waist up. The article is headed "<u>Life and Very Different Loves of the PR Girl in Doc Martens</u>". It reads as follows;

> "1. Having been unveiled as the other half of Chris Huhne's 'serious relationship', Carina Trimingham now faces the formidable task of transforming herself into a Cabinet Minister's consort.
>
> 2. Whether or not she welcomes her new role remains to be seen: clandestine suppers and sleepovers with a married lover are one thing; stepping into the harsh glare of the political limelight as a marriage wrecker is another.
>
> 3. And <u>Trimingham, with her boyish cropped, spiky hair cut and her love of Doc Marten's boots and jeans</u>, could be forgiven for feeling rather out of place as she takes her place as the Secretary of State for Energy's official partner.
>
> 4. According to friends the 44-year-old media consultant now working as Campaigns Director of the Electoral Reform Society, <u>does not fit the traditional feminine mould of political wife</u>". She was married briefly in 1999, to a man named … but they divorced after just a few years. More recently she has shared a flat with another woman to whom she was said to be close. According to Lib Dem sources she was in a civil partnership with a woman but broke up with her last year.
>
> 5. '<u>Carina has had relationships with both men and women, but generally not at the same time", says a friend. "I think most people she met assumed she was lesbian, but very occasionally she would talk about having had relationships with men. Only her closest friends knew she had been married. Everyone else assumed she was gay</u>.'…

> 7. As a former work associate puts it: "it seems like yesterday that she was out drinking in bars while promoting the latest popstar". Born Adrienne Carina Trimingham in South London in 1966, <u>her own upbringing in Hove, East Sussex was far from stable. Her father Adam had been married a further twice since divorcing her mother Patricia who herself went on to marry again.</u> …
>
> 20. According to a neighbour she has been a regular visitor over the past year. But those who know her insist that despite being outed as Mr Huhne's mistress and being touted as a potential Mrs Huhne mark 2, Trimingham is too much of an individual to ditch her boyish image. Instead she will keep on wearing her Doc Martens and break the mould of political wife.
>
> 21. If nothing else it seems likely that Huhne's infamous mahogany trouser press, the £119 cost of which he claimed on his expenses before agreeing to pay the money back will be getting twice as much use from now on".

35. The 22 June 2010 article by Barbara Davies covers the whole of page seven of *The Daily Mail*. The title is "Huhne's Lover and the Civil Partner She Left Broken Hearted". There are two photographs. The top photograph is the wedding party photographs showing Ms Trimingham and her civil partner. The second photograph is one taken on the day of the May 2010 General Election showing Mr Huhne and Ms Pryce at the count, with Ms Trimingham behind Ms Pryce. The article includes the following:

> "1. Being the other woman in Chris Huhne's tangled love life might be considered drama enough for some, but now it emerges that his 44-year-old mistress <u>Carina Trimingham has left behind her very own trail of heartbreak and betrayal.</u>
>
> 2. <u>While Huhne's wife, economist Vicky Pryce is coming to terms with her husband's adulterous affair, so too is Ms Trimingham's civil partner, psychotherapist …</u> who knew nothing of it until it was made public at the weekend.
>
> 3. Ms Trimingham is believed to have embarked on her passionate relationship with 55-year-old Cabinet Minster Huhne less than an year after her civil partnership ceremony with 56-year-old … in June 2007.
>
> 4. The couple, who until this week were still living under the same roof at their jointly owned London home separated at Christmas with Ms Trimingham insisting that no one else was involved in her decision to end their union.
>
> 5. 'This will destroy… this will break her heart,' says her civil partner's sister…, insisting that former political

> reporter and media consultant Ms Trimingham had been living a lie in recent months. …
>
> 8 According to one friend: 'Carina kept saying she did not want to hurt……. Was buxom older, fiery and they had been together a few years and only married recently. They seemed like a very happy lesbian couple'.
>
> 9. <u>But behind her partners back Carina began to confide in friends that she was having a sexual relationship with a man without initially identifying him.</u>
>
> 10. <u>Her friend adds "She would go on about how she and this man were having wild sex several times a night. She was quite surprised by the whole thing as she had not been into men for a long time. Apparently the sex was incredible</u>".
>
> GUESS WHO CAME UP WITH "CALAMITY CLEGG"
>
> Carina Trimingham was last night unmasked as the spin doctor behind the damaging 'Calamity Clegg' smear three years ago. She sent a briefing memo rubbishing Nick Clegg – now Deputy Prime Minister – when he was backing Chris Huhne for the party leadership. …"

36. The 22 June article by Richard Littlejohn covered about two thirds of page 17 under the title "It's Huhne's Hypocrisy and Lies that Matter not his Sex Life". The text included the following:

> "1. When the pictures of Chris Huhne's mistress were published she looked familiar. <u>I recognised her from the days we both used to work for Sky News.</u>
>
> 2. <u>Funny, I thought to myself, I always had her marked down as a lesbian.</u>
>
> 3. <u>Turns out I was half right. Carina Trimingham is bisexual. Even though she currently is sweating up the sheets with Chris Huhne, its not that long ago that she married her lesbian lover in a civil partnership ceremony.</u>
>
> 4. Takes all sorts. According to profiles among the many jobs she's had over the past few years was working a press officer for AC/DC.
>
> 5. That would explain it. You couldn't make it up.
>
> 6. Seeing as she also worked for Top of the Pops, its probable that the AC/DC in question is the Australian group who once released an album called Dirty Deeds Done Dirt Cheap rather than the

Campaign for Bi-sexual Equality. But, these days, who knows?

7. If you asked to draw a comedy lesbian from central casting, Carina Trimingham is what you'd get. All spiky hair and Doc Martens. Chuck in a boiler suit and she's Milly Tant straight from the pages of Viz magazine.

8. What Huhne sees in her can only be a matter for speculation. Apparently she has told friends that the sex with Huhne is "amazing", which must have gone down a storm with Sapphic Sisterhood…

12. Its all very well banging on about being 'non-judgmental' but politicians invite us to judge them. Like it or not, personal and political become inseparable when MP's seek our endorsement.

13. Huhne put his private life on offer when he paraded his family for public approval at the General Election.

14. He even published his wedding snaps from 26 years ago and boasted: "Family matters to me so much"- even though he was up to his neck in an affair with a bisexual woman 12 years his junior…

21. While love can be blind, did he know when he began the relationship that Miss Trimingham was already married to a lesbian?

22. As a former journalist himself Huhne must have realised that the headline "Married Minister in Lesbian Love Triangle" would prove irresistible...

29. Huhne's behaviour isn't surprising. It's depressingly predictable, although a Minister leaving his wife and running off with a lesbian is a novelty…

31. What matters here is not the sex, it's the lies, hypocrisy and blatant deception. And on that the liberal voters of Eastleigh not the "liberal" commentariat of Metropolitan London will be Huhne's judge and jury".

37. The 23 June 2010 article covers about one third of page 25 of the newspaper. The title is "Cheat on my Wife? Nothing like that will ever emerge! What hypocrite Huhne told the voters in 2007". It includes:

1. Chris Huhne once assured voters that he would never cheat on his wife and promised:

"Nothing like that will emerge".

2. The Energy Secretary's fateful pledge was delivered in an interview set up by his then press officer Carina Trimingham.

3. Now he has left his 57-year-old wife for bisexual Ms Trimingham, 44, who herself split from her own female partner. …

7. Earlier this year the MP produced a slushy election leaflet bragging of his family values complete with album-style treasured snaps of his wife and baby. He wrote under them: "Family matters to me so much, where would we be without them? I took becoming a father so seriously".

8. Yet by this time he was enjoying secret trysts at his constituency home with Ms Trimingham who boasted to friends of "wild sex" going on all night…

11. Ms Trimingham also broke her silence yesterday, making her first comments on the scandal from a friend's villa abroad.

12. She said she wanted to set the record straight – not about her affair with the MP but about reports that she wears Doc Marten boots.

13. The crop haired former journalist and press officer - now the Campaigns Director for the Electoral Reform Society - insisted: "I have never worn Doc Martens in my life."…

38. The 24 June 2010 article by Richard Kay appears on page 4, where it covers about one quarter of the page under the title "Huhne, Hughes and their Very Liberal Lover". It includes:

> 1. There is an intriguing twist to the confusing romantic life of Cabinet Minister Chris Huhne's crop-haired bisexual lover Carina Trimingham. For I find that the Energy Secretary is not the only Liberal Democrat that Carina has set her baseball cap at.
>
> 2. An earlier target was, I can reveal, Simon Hughes - newly elected deputy leader of the Lib Dems.
>
> 3. But Hughes, it seems was the one who got away, which perhaps is not all that surprising. …
>
> 8. "She was also absolutely passionate about the Lib Dems and worked for them too", says a friend who knew her well at the time. "She was always talking about how much she liked Simon – they would go out on numerous dates – and she really had the hots for him.
>
> 9. But then she would say how odd it all was that her flirtations got no where however hard she tried.

> 10. "She finally gave up and I remember her telling me that she thought he could be gay.
>
> 11. "Of course, no one at the time had any idea, but she was very disappointed <u>at her lack of success with him</u>".
>
> 12. As well as regaling her pals with tales of Hughes … "she told me stories about the dirty tricks they would get up to.
>
> 13. "<u>She always looked rather masculine – but when I knew her we had no idea she had lesbian leanings</u>".

39. The June 24 2010 on page 19 appears under the title "Did Huhne's wife lose her job over his affair?" It is illustrated with a photograph of Mr Huhne with his wife. It includes:

> 1. He has proved that Cabinet Ministers can keep their jobs even if they're caught having an affair.
>
> 2. For just days after details of Chris Huhne's infidelity emerged, his wife has announced that she is quitting her post in Government.
>
> 3. Vicky Pryce who is a senior civil servant, was left humiliated by the Energy Secretary's announcement on Saturday that he would leave her for his bisexual mistress Carina <u>Trimingham, who has split up from her own female partner</u>…."

40. The relevant parts of some of the other articles complained of are set out below under the heading of the journalist who wrote them and came to give evidence. With one exception it is not necessary to set out any of the other articles, since they raise no separate issues. The one exception is the article by Quentin Letts, which Ms Trimingham states that she found particularly distressing. It contains 16 paragraphs and appears on page 8 immediately under the article by Ms Walker. The first four paragraphs start "Ah, Chris Huhne! One of my favourites…" and continue in the same light satirical style describing his speech at the Liberal Democrats' Party Conference. There are then two paragraphs about Ms Trimingham, and one about Ms Pryce. Paragraphs 8 to 11 contain unflattering remarks about Mr Huhne's personal appearance, his voice and his speaking style. Paragraphs 12 to 15 are a diversion to comment in the same light critical style on something Mr Clegg had said that morning on the radio. The last two paragraphs describe his leaving the stage and mention Ms Trimingham. The piece is illustrated with a large full length photograph of Ms Trimingham sitting in the front row to listen to Mr Huhne's speech, and a head shot of Ms Pryce inset. It is unflattering of Ms Trimingham, being taken from a low angle. The passage of which Ms Trimingham complains is paragraphs 5 and 6 which read:

> "<u>Talking of which, popsy Carina – big strong girl unlucky not to catch the England rugby selectors' eyes for inclusion in the World Cup squad as a second-row forward – was sitting in the front next to Brian Paddick.</u>

> Gay Brian, LibDem London mayoral candidate, has theories about how to make villains go straight. Carina herself was gay but swapped ends after meeting Chris.
>
> Chris dumped his Greek wife, the one who looks like Beattie from the BT ads…"

READERS' COMMENTS

41. Also under the heading of harassment, Ms Trimingham relies on readers' comments published on the Mail Online set out in a Schedule of 152 separate items ("Readers' Comments"). Seventy one comments are identified amongst those posted in respect of the first article complained of, namely that dated 20 June 2010. One comment is identified in respect of the publication on 21 June 2010. Items 6 to 45 are identified in relation to the publication on 22 June 2010. Items 46 to 48 are identified in relation to the publication on 24 June 2010. Items 49 to 53 are identified in relation to the publication on 23 June 2010. No comments are relied on in relation to the publication on 24 June 2010 (article 6). Items 54 to 56 are relied on in relation to the publication on 24 June 2010 (article 7). Items 57 and 58 are relied on in relation to the publication on 1 July 2010 (article 8). Items 72 to 152 are relied on in relation to the articles identified in the Schedule of Further Publications.

42. In relation to the Schedule of Reader's Comments Ms Trimingham states:

> "In summary, those reader comments taunt and lampoon the Claimant for being ugly and attack her in regard to her sexuality. It would be obvious to any reasonable person that comments of this type would cause unwarranted distress on the part of their subject, the Claimant".

43. There are 152 postings set out in the Schedule. There are 45 on the article of 20 June, which is not complained of. Most are a sentence or two long, but a few are a paragraph. Most of these are one or two line postings in which the writer comments on Ms Trimingham's appearance, or compares it unfavourably with that of Ms Pryce. Some contain no reference at all to Ms Trimingham's sexuality, for example: "It always surprises me when men leave their wives for uglier women". Others contain oblique references to her sexuality eg "Hold your head high Vicky, at least you look like a real WOMAN!" Some contain explicit references, and comment adversely upon her behaviour eg "Obviously Ms Trimingham can't work out if she's gay or straight and she's hardly a teenager either. What a sordid story". Some include defamatory statements of fact as well as comments, but she does not sue in defamation: "he will have to live with a lying cheating manipulative Lesbian who looks like a horse". A few comments are linked to the current discussion of whether the law should recognise marriage between same sex couples. The language of two of the comments refers to her respectively as "that ugly dog" and "one ugly pig".

44. According to the calculations done for the Defendant, only a tiny minority of the readers' comments are complained of. Out of the 179 comments in respect of the article published on 21 June, only 17 are complained of, and only a few words of those. And a full range of opinions is represented in the readers' comments.

## THE LAW ON HARASSMENT AND FREEDOM OF EXPRESSION

45. Ms Trimingham claims that the Defendant has pursued a course of conduct amounting harassment under the PHA. It includes all of the publications of which she also makes complaint on other bases, that is, on the basis they are a misuse of private information, or a breach of CDPA s.85. This course of conduct includes publication of comments about her personal appearance as well as her sexuality, all of which she finds offensive, both in the articles complained of and in the Readers' Comments. She claims that the reactions in the Readers' Comments were stimulated by the articles written by the journalists. The gathering of the news about her civil partner is part of this complaint.

46. I therefore consider it appropriate to consider first Ms Trimingham's complaint of harassment under the PHA, in particular as it arises out of the repeated references to her sexuality and appearance, and to consider later her complaints under the law relating to misuse of private information. I think this, notwithstanding that it was under the law on misuse of private information that the claim was advanced until the amendments were made in November 2011 after the adjournment of the trial in October. Her complaints as to the manner in which the Defendant gathered the news about her are also best understood as claims in harassment. Her other complaints relating to the photographs, and disclosure of specific items of information about herself and her parents can be considered under the heading of harassment, but more readily together with all her complaints of misuse of private information.

47. The PHA, so far as material, provides:

> "1 (1) A person must not pursue a course of conduct – (a) which amounts to harassment of another, and (b) which he knows or ought to know amounts to harassment of the other…
>
> (2) The person whose course of conduct is in question ought to know that it amounts to or involves harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to or involved harassment of the other.
>
> (3) Subsection (1) … does not apply to a course of conduct if the person who pursued it shows – … (c) that in the particular circumstances the pursuit of the course of conduct was reasonable. …
>
> 2 (1) A person who pursues a course of conduct in breach of section 1 is guilty of an offence…
>
> 3 (1) An actual or apprehended breach of Section 1 may be the subject of a claim in civil proceedings by the person who is or may be the victim of the course of conduct in question.

> (2) On such a claim, damages may be awarded for (among other things) any anxiety caused by the harassment and any financial loss resulting from the harassment…
>
> 7(2) References to harassing a person include alarming the person or causing the person distress.
>
> (3) A 'course of conduct' must involve – (a) in the case of conduct in relation to a single person conduct on at least two occasions in relation to that person.…
>
> (4) "Conduct" includes speech".

48. Although passed before the HRA, the PHA is (like the law of libel and the Data Protection Act 1998) one of the many different laws of England that give effect to the obligation of the state to prevent interference with the right of individuals to protection of their private lives under ECHR Art 8. This provides:

> "*Article 8 right to respect for private and family life*
>
> (1) Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> (2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society … for the protection of the rights and freedoms of others."

49. In *Wainwright v The Home Office* [2003] UKHL 53 [2004] 2 AC 406 at para 18 Lord Hoffmann explained this as follows:

> "There are a number of common law and statutory remedies of which it may be said that one at least of the underlying values they protect is a right of privacy. Sir Brian Neill's well known article "Privacy: a challenge for the next century" in Protecting Privacy (ed B Markesinis, 1999) contains a survey. Common law torts include trespass, nuisance, defamation and malicious falsehood; there is the equitable action for breach of confidence and statutory remedies under the Protection from Harassment Act 1997 and the Data Protection Act 1998".

50. *Thomas v News Group Newspaper Ltd* [2001] EWCA Civ 1233; [2002] EMLR 78 concerned a publication in a newspaper, which was held by the Court of Appeal to be capable of constituting harassment. The matter came before the court on appeal against the refusal of a judge to strike out the claim (there has hitherto been no trial of a claim in harassment against a newspaper in England, although there has been one in Northern Ireland which failed: *King v Sunday Newspapers Ltd* [2010] NIQB 107; [2011] NICA 8). In *Thomas* the publishers of *The Sun* included in that newspaper a number of articles referring to the claimant, whom they identified on each occasion as black. The Court of Appeal held that in their context it was arguable that the articles were racist, and likely to cause the claimant distress. The fact that it was true that she

was black was immaterial, because the test is whether in the circumstances the conduct was reasonable or otherwise within a defence recognised by the PHA.

51. Mr Ryder also draws attention to the fact that a part of the claim based on readers' letters published in *The Sun* was not struck out. The readers' letters were published in the print edition of the paper: para [6]. Lord Phillips said at para [48]:

> "The Sun did not disassociate itself from its readers' letters. The opinions that these expressed were in line with the tone of the article that had provoked them. The letters were critical both of the complaint and of the punishment of the sergeants for allegedly racist remarks and, thus, inevitably, made comments about racism. However, none of the letters ostensibly suggested that the conduct of the respondent which was criticised was attributable to her race. It seems to me that these letters add to the respondent's case that the appellants were pursuing a course of conduct which they could foresee was likely to cause her distress, but do not, when taken in isolation, add to the respondent's case that this course of conduct was racist."

52. In seeking to identify what type of conduct could amount to harassment within the statute Lord Phillips noted the following (emphasis added):

> "[24] Section 3 of the HRA requires the court, so far as it is possible to do so, to interpret and give effect to legislation in a manner which is compatible with Convention rights. Section 12 of the HRA emphasises the care which the court must take not to interfere with journalistic freedom unless satisfied that this is necessary according to the principles to which I have referred. Both these sections are important when considering the ambit of the criminal offence and the civil tort of harassment created by the 1997 Act in the context of publications by the media. <u>Harassment must not be given an interpretation which restricts the right of freedom of expression, save in so far as this is necessary in order to achieve a legitimate aim.</u> When considering that question, the court is required by section 2 of the HRA to have regard to the Strasbourg jurisprudence.
>
> [30] The Act does not attempt to define the type of conduct that is capable of constituting harassment. "Harassment" is, however, a word which has a meaning which is generally understood. It describes *conduct targeted at an individual* which is calculated to produce the consequences described in section 7 and which is oppressive and unreasonable. The practice of stalking is a prime example of such conduct.
>
> [32] Whether conduct is reasonable will depend upon the circumstances of the particular case. When considering whether the conduct of the press in publishing articles is reasonable for the purposes of 1997 Act, <u>the answer does not turn upon whether opinions expressed in the article are reasonably held.</u>

> The question must be answered by reference to the right of the press to freedom of expression which has been so emphatically recognised by the jurisprudence both of Strasbourg and this country.
>
> [33] Prior to the 1997 Act, the freedom with which the press could publish facts or opinions about individuals was circumscribed by the law of defamation. Protection of reputation is a legitimate reason to restrict freedom of expression. Subject to the law of defamation, the press was entitled to publish an article, or series of articles, about an individual, notwithstanding that it could be foreseen that such conduct was likely to cause distress to the subject of the article.
>
> [34] The 1997 Act has not rendered such conduct unlawful. In general, press criticism, even if robust, does not constitute unreasonable conduct and does not fall within the natural meaning of harassment. <u>A pleading, which does no more than allege that the defendant newspaper has published a series of articles that have foreseeably caused distress to an individual, will be susceptible to a strike-out on the ground that it discloses no arguable case of harassment</u>.
>
> [35] … before press publications are capable of constituting harassment, they must be attended by some exceptional circumstance which justifies sanctions and the restriction on the freedom of expression that they involve. It is also common ground that such circumstances will be rare.
>
> [37] The publication of press articles calculated to incite racial hatred of an individual provides an example of conduct which is capable of amounting to harassment."

53. What I understand Lord Phillips to be saying is that, for the court to comply with HRA s.3, it must hold that a course of conduct in the form of journalistic speech is reasonable under PHA s.1(3)(c) unless, in the particular circumstances of the case, the course of conduct is so unreasonable that it is necessary (in the sense of a pressing social need) and proportionate to prohibit or sanction the speech in pursuit of one of the aims listed in Art 10(2), including, in particular, for the protection of the rights of others under Art 8. The word "targeted" is not in the statute. I take Lord Phillips to be using it to give guidance as to what is meant in s.7(3) by the words "conduct in relation to ... a person": those words are to be interpreted restrictively to comply with HRA s.3.

54. Lord Phillips summarised the test as follows at para [50]:

> "the test requires the publisher to consider whether a proposed series of articles, which is likely to cause distress to an individual, will constitute an abuse of the freedom of press which the pressing social needs of a democratic society require should be curbed".

55. This succinctly expresses the test which always applies where the rights of a claimant under Art 8 and of a defendant under Art 10 are in issue. The court is required to follow the guidance of the House of Lords in *Re S (A child)(Identification: Restriction on Publication)* [2004] UKHL 47 at para [17], as follows: (i) neither Article as such has precedence over the other; (ii) where the values under the two Articles are in conflict, an intense focus on the comparative importance of the specific rights being claimed in the individual case is necessary; (iii) the justifications for interfering with or restricting each right must be taken into account; (iv) finally, the proportionality test – or "ultimate balancing test" - must be applied to each. PHA s.1(3)(c) requires the court apply that test to “the pursuit of the course of conduct”.

56. As is made clear by other authorities on freedom of expression cited below, it is no part of the court’s role to decide whether what is published in a newspaper is reasonable in any other sense, still less whether the judge agrees with what a newspaper publishes.

Meaning

57. In considering the effect of a course of conduct which consists of speech the court may have to decide what meaning the words convey. For example, in this case, Ms Trimingham alleges that the word “bisexual” is pejorative when used by the Defendant. In deciding what words mean it is common ground that the court should put itself in the position of a reasonable person. In the case of harassment by written words there are two relevant persons: the writer and the subject of what is written. It is the effect on the subject which the writer knows, or ought to know, that may give rise to liability.

58. In defamation it is only the third party readers whose understanding of a meaning is relevant. The meaning intended by the writer, or understood by the subject is not relevant to liability. But there is nevertheless an analogy. In *Jeynes v News Magazines Ltd* [2008] EWCA Civ 130 at [14] Sir Anthony Clarke MR set out the test for deciding what is capable of being defamatory. With some editing to remove words applicable only to defamation, the following version of that guidance may help in the interpretation of a course of conduct consisting of speech which is alleged to be pejorative of a claimant:

> "The governing principles relevant to meaning … may be summarised in this way: (1) The governing principle is reasonableness. (2) The hypothetical reasonable [person] is not naïve but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking but he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-[pejorative] meanings are available. (3) Over-elaborate analysis is best avoided… (5) The article must be read as a whole, ...”

59. In the online edition of the Oxford English Dictionary, the following meanings attributed to the words used in the articles complained of are the ones that I find to be most apposite: "Bisexual: A person who is sexually attracted to members of both sexes; Lesbian: A female homosexual; Homosexual: A person who has a sexual propensity for his or her own sex; *esp.* one whose sexual desires are directed wholly or largely towards people of the same sex.".

60. The Editors' Code uses the word pejorative, and from the same source I take that to mean: "Pejorative: A word or expression which by its form or context expresses or implies contempt for the thing named; a derogatory word or form."

61. Mr Ryder invited me to take account of the definition of homophobic set out in the Glossary to the Public Statement issued to the Public by the Crown Prosecution Service explaining the Policy for Prosecuting Cases with a Homophobic Element. That is a complicated definition (it is five lines long), and it does not purport to be a statement of the law.

62. The word "homophobic" is introduced into the case by Ms Trimingham. According to the Dictionary it means: "hostile towards homosexuals". But I do not think that a definition is needed for the purposes of this judgment. The words used in the legislation and case law relating to speech include distress, harassment, insult, abuse and ridicule. All of these can be by speech which refers to a person's sexual orientation, as well as to any number of other personal characteristics including looks and race.

63. The question for me to decide is not whether the CPS would or should prosecute the Defendant, but whether Ms Trimingham has proved her claim that the Defendant has committed the statutory tort created by the PHA. The CPS has not in fact prosecuted the Defendant. And no one has suggested to me that Ms Trimingham is aggrieved at that.

Other speech crimes and torts

64. In stating in *Thomas* at para [33] that "Prior to the 1997 Act, the freedom with which the press could publish facts or opinions about individuals was circumscribed by the law of defamation" and subject to that "the press was entitled to publish an article, or series of articles, about an individual, notwithstanding that it could be foreseen that such conduct was likely to cause distress to the subject of the article", Lord Phillips was speaking only of the civil law.

65. Until the nineteenth century, the main sources of interference with freedom of expression were the public order crimes, which were also confusingly known as libels. These speech crimes included criminal libel (akin to civil defamation, but the allegation had to be so grave as to justify criminal sanctions), sedition and blasphemy. These laws had been very strictly and frequently enforced until the end of the eighteenth century, including against journalists. During the nineteenth and twentieth centuries enforcement declined and these laws have now all been repealed.

66. The old speech crimes have been replaced by new ones. These include the PHA, but more particularly the Public Order Act 1986, as amended. And it has been substantially amended since Lord Phillips's judgment in *Thomas*. These new crimes

apply to the publication of abusive or insulting words, and they can be committed by news publishers.

67. Mr White cited s.4A, inserted in 1994. It provides: "A person is guilty of an offence if, with intent to cause a person harassment, alarm or distress, he... (b) displays any writing, ... which is threatening, abusive or insulting, thereby causing that or another person harassment, alarm or distress". The PHA does not require intent. Nor does s.5, which prohibits the display of "any writing, sign or other visible representation which is threatening, abusive or insulting, within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby". Mr White also referred to s.19: "A person who publishes or distributes written material which is threatening, abusive or insulting is guilty of an offence if (a) he intends thereby to stir up racial hatred, or (b) having regard to all the circumstances racial hatred is likely to be stirred up thereby", against a group of persons.

68. There is also s.29C which relates to sexual orientation. It provides that "A person who publishes or distributes written material which is threatening is guilty of an offence if he intends thereby to stir up religious hatred or hatred on the grounds of sexual orientation". "Hatred" is defined as being against a group of persons. The last of these, s29C, was introduced as to religious hatred by the Racial and Religious Hatred Act 2006, and as to sexual orientation by the Criminal Justice and Immigration Act 2008. It is to be noted that it applies only to threatening words, not to insulting words, and it also requires intent. There are provisions for the protection of freedom of expression (as required by the Strasbourg cases cited below), including s.29JA. This provides that: "… the discussion or criticism of sexual conduct or practices or the urging of persons to refrain from or modify such conduct or practices shall not be taken of itself to be threatening or intended to stir up hatred".

69. As Mr White submitted, there is in England and Wales no other crime of insult, and no tort of insult, unless it can be brought under the PHA. Insults, or abuse which conveys no defamatory imputation, are not actionable as defamation: Gatley on Libel and Slander 11th ed para 3.35. Unlike the PHA, the crimes under the Public Order Act 1986 (as amended) which do involve insults do not also give rise to a statutory tort.

70. This is not to say that the repeated publication in the media of offensive or insulting words about a person's appearance can never amount to harassment. On the contrary, in my judgment in principle it can. The same applies with much greater force to a person's sexuality. I accept Mr Ryder's general proposition that repeated mocking by a national newspaper of a person by reference to that person's sexual orientation would almost inevitably be so oppressive as to amount harassment. The same is likely to apply to repeated mocking by reference to any of the characteristics which are defined as protected characteristics in the Equality Act 2010, s4, even where the Equality Act 2010 does not apply. That is because of the nature of those characteristics. The PHA is vague in its drafting, and so gives the court ample scope to interpret it so as to give effect to both of the two rights under Art 8 and to Art 10. There is little overlap between it and the Public Order Act crimes, since they are defined by reference to groups, whereas under the PHA the focus is on the effect upon individuals.

71. Mr Ryder referred to the Equality Act while rightly making clear that the anti-discrimination legislation does not apply to statements published to the public at large

in the press or online. The Public Order Act speech crimes also give some support to Mr Ryder's submission that sexual orientation, together with race and religion, are characteristics of an individual protected by the law.

72. Mr Ryder sought to introduce the concepts of anti-discrimination legislation by another route. HRA s.12(4) requires the court, in the case of journalistic material, to have regard to any relevant privacy code. He submits that the Editors' Code is such a code, and in particular that clause 12 is part of a relevant privacy code.

Mr Ryder further submitted that regardless of its status with regard to privacy, the Court should take account of the fact that Clause 12 of the Editors' Code indicated, in the context of the harassment claim, that the Defendant had accepted that compliance with its terms was not a disproportionate interference with the Defendant's Article 10 rights. In particular, the need to avoid prejudicial and pejorative references to someone's sexuality and the need to avoid publication of details of someone's sexual orientation 'unless genuinely relevant to the story'.

73. Mr White accepts that s.12(4) requires the court to have regard to the privacy provisions of the Editors' Code (clause 3), but he submits that clause 12 of that Code is not itself a privacy code. The Editors' Code includes requirements that have nothing to do with privacy, such as accuracy, and giving an opportunity to reply. He submits that discrimination is one of these requirements. (In addition, on the merits of the point, Mr White submits that the references to Ms Trimingham's sexual orientation were never pejorative, and were always relevant).

74. In my judgment, on this narrow point, Mr White's submission is to be preferred. Clause 12 of the Editors' Code may be about private life in the wide sense used in Art 8, but it is not a natural meaning of the words "privacy code" in s.12(4)(b). Clause 12 is headed "Discrimination". It seems to me to be directed to matters which are within editorial independence. Whether there has been a breach of the Code is a matter for the PCC, and not for the courts.

75. However, if references in a newspaper article to a person's sexual orientation are pejorative or irrelevant, the court does not need to refer to clause 12 of the Editor's Code to take these references into account, and to draw such conclusions or inferences from them as may be appropriate. That is so in relation to a claim for harassment, as it would be for any other cause of action. But s.12(4)(b) does not create a statutory wrong of non-compliance with the Editors' Code. Nor does clause 12 of the Editors' Code provide any sort of short cut for a claimant seeking to prove that journalists knew or ought to have known that what they were publishing amounted to harassment of the claimant. At most it provides some evidence of what a reasonable journalist ought to know.

Cases on freedom of expression

76. Freedom of expression is a right protected by the common law. The common law requires that a narrow construction be given to legislation restricting that right, as Beatson J recalls in *R* (*Calver) v Public Services Ombudsman for Wales* [2012] EWHC 1172 (Admin) at paras [39]-[40], and as one of the cases cited in *Calver* demonstrates, *Livingstone v Adjudication Panel for England* [2006] EWHC 2533 (Admin). In that case the Mayor of London on leaving a reception was pursued by a

journalist and photographer (from the Defendant, as it happens). Collins J recorded that (whether reasonably or otherwise) Mr Livingstone loathed the Defendant, and made a remark so offensive to the journalist, who was Jewish, that the Board of Deputies of British Jews made a formal complaint about it which the Standards Board for England upheld, with the result that Mr Livingstone was suspended. Allowing Mr Livingstone's appeal, Collins J said:

> "[36] I have no doubt that the appellant was not to be regarded as expressing a political opinion which attracts the high level of protection. He was indulging in offensive abuse of a journalist whom he regarded as carrying out on his newspaper's behalf activities which the appellant regarded as abhorrent. Nevertheless, …, Article 10 applied. Anyone is entitled to say what he likes of another provided he does not act unlawfully and so commits an offence under, for example, the Public Order Act. Surprising as it may perhaps appear to some, the right of freedom of speech does extend to abuse. Observations, however offensive, are covered… [39] However offensive and undeserving of protection the appellant's outburst may have appeared to some, it is important that any individual knows that he can say what he likes, provided it is not unlawful, unless there are clear and satisfactory reasons within the terms of Article 10(2) to render him liable to sanctions."

77. A much quoted example in the common law is *Redmond-Bate v DPP* (1999) 7 BHRC 375 where the question was: was it reasonable for the police officer to arrest the appellant who had not conducted herself in a manner which would be said to constitute an offence under the Public Order Act 1986 when any apprehension by the police officer of violence or threat of violence which could be said to be likely to breach criminal law emanated from others present? The appellant was said to be a Christian fundamentalist who had been preaching a message that concerned morality, God and the Bible. Sedley LJ said at para [20] (emphasis added: and the qualification "so long as it does not tend to provoke violence" would now have to include additional words to refer to the other legitimate aims set out in Art 10(2)):

> "Nobody had to stop and listen. If they did so, they were as free to express the view that the preachers should be locked up or silenced as the appellant and her companions were to preach. ... Mr. Kealy was prepared to accept that blame could not attach for a breach of the peace to a speaker so long as what she said was inoffensive. This will not do. <u>Free speech includes not only the inoffensive but the irritating, the contentious, the eccentric, the heretical, the unwelcome and the provocative provided it does not tend to provoke violence. Freedom only to speak inoffensively is not worth having.</u> ... From the condemnation of Socrates to the persecution of modern writers and journalists, our world has seen too many examples of state control of unofficial ideas. A central purpose of the European Convention on Human Rights has been to set close limits to any such assumed power. We in this country continue to owe a debt to

> the jury which in 1670 refused to convict the Quakers William Penn and William Mead for preaching ideas which offended against state orthodoxy."

78. *Thomas* was a strike out application, not a trial. If the Court of Appeal had interpreted the PHA in accordance with the common law, the result would have been as restrictive of any interference with freedom of expression as was the interpretation by reference to the HRA, which had by then come into force. Lord Phillips did not have to explain the full implications of the requirement that the court interpret the PHA so that "harassment must not be given an interpretation which restricts the right to freedom of expression". In my judgment the points at which the court must give effect to that guidance include s.1(1) and (2) (what a reasonable person in possession of the relevant information would think would amounts to harassment) as well as s.3(1)(c) (discussed above). A reasonable person within the meaning of s.1(2) must be a person who adheres to the values in the Convention. As Nicol J said in *Ferdinand v MGN Ltd* [2011] EWHC 2454 at para [64]:

> "Freedom of expression, after all, is one of the human rights guaranteed in the Convention because it is an integral part of the foundation of a democratic state and pluralism has long been recognised by the Strasbourg Court as one of the essential ingredients of a democracy (see for example *Handyside v UK* (1979-80) 1 EHRR 737 at [49]). While I accept that the subjective perception of a journalist cannot convert an issue into one of public interest if it is not …, the Court's objective assessment of whether there is a public interest in the publication must acknowledge that in a plural society there will be a range of views as to what matters or is of significance in particular in terms of a person's suitability for a high profile position."

79. What the Strasbourg Court said in that passage in *Handyside* (and re-iterated in a case cited in *Thomas* at para [21]) included:

> "Freedom of expression constitutes one of the essential foundations of such a society, one of the basic conditions for its progress and for the development of every man. Subject to paragraph 2 of Article 10, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society"."

80. *Observer and Guardian v UK* (1992) 14 EHRR 153 is another much cited statement of this principle by the Strasbourg Court. It said at para 51 (emphasis added):

> "(a) Freedom of expression constitutes one of the essential foundations of a democratic society; subject to paragraph 2 of Article 10, it is applicable not only to "information" or "ideas"

> that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Freedom of expression, as enshrined in Article 10, is subject to a number of exceptions which, however, must be narrowly interpreted and the necessity for any restrictions must be convincingly established.
>
> (b) These principles are of particular importance as far as the press is concerned. Whilst it must not overstep the bounds set, inter alia, in the "interests of national security" or for "maintaining the authority of the judiciary", it is nevertheless incumbent on it to impart information and ideas on matters of public interest. Not only does the press have the task of imparting such information and ideas: the public also has a right to receive them…"

Editorial independence, relevance and freedom of expression

81. Mr White cited *Jersild v Denmark* (1995) 19 EHRR1, a case about racist talk, in support particularly of his case in relation to Readers' Comments. The Court said at para 31:

> "It is not for this Court, nor for the national courts for that matter, to substitute their own views for those of the press as to what technique of reporting should be adopted by journalists."

82. Mr White also cited a number of English authorities on the restraint that courts should exercise in relation to the manner in which journalists write about matters which are of public interest. In *Guardian News and Media Ltd, Re HM Treasury v Ahmed* [2010] UKSC 1 [2010] 2 AC 697 Lord Rodger said this in a much cited passage where the issue was anonymity, but which applies also more generally:

> "What's in a name? "A lot", the press would answer. This is because stories about particular individuals are simply much more attractive to readers than stories about unidentified people. It is just human nature. And this is why, of course, even when reporting major disasters, journalists usually look for a story about how particular individuals are affected. Writing stories which capture the attention of readers is a matter of reporting technique, and the European Court holds that article 10 protects not only the substance of ideas and information but also the form in which they are conveyed: *News Verlags GmbH & Co KG v Austria* (2000) 31 EHRR 246, 256, para 39, quoted at para 35 above. More succinctly, Lord Hoffmann observed in *Campbell v MGN Ltd* [2004] 2 AC 457, 474, para 59, "judges are not newspaper editors." See also Lord Hope of Craighead in *In re British Broadcasting Corpn* [2009] 3 WLR 142, 152, para 25. This is not just a matter of deference to editorial independence. The judges are recognising that editors know best how to present material in a way that will interest the readers of their particular publication and so help them to

> absorb the information. A requirement to report it in some austere, abstract form, devoid of much of its human interest, could well mean that the report would not be read and the information would not be passed on."

83. In *MGN Ltd v United Kingdom* - 39401/04 [2011] ECHR 66, [2011] EMLR 20 the Strasbourg Court noted at para 145 that in *Campbell*:

> "each member of the majority specifically underlined the protection to be accorded to journalists as regards the techniques of reporting they adopt and as regards decisions taken about the content of published material to ensure credibility, as well as journalists' duties and responsibilities to act in good faith and on an accurate factual basis to provide "reliable and precise" information in accordance with the ethics of journalism (citing, in particular, *Jersild v. Denmark…*)…"

84. The passage from Lord Hoffman's speech in *Campbell* on editorial independence reads as follows:

> "59. The question is then whether the *Mirror* should have confined itself to these bare facts or whether it was entitled to reveal more of the circumstantial detail and print the photographs. If one applies the test of necessity or proportionality which I have suggested, this is a matter on which different people may have different views. That appears clearly enough from the judgments which have been delivered in this case. But judges are not newspaper editors. …"

85. The consequence of these cases is that a court should be slow to draw inferences from the court's view of what is or is not relevant in an article published in a newspaper. When relevance is in issue, it must be possible for the court to answer the question: relevant to what? In relation to the defence of qualified privilege in defamation, it is at least clear what answer is to be given to the question: relevant to what? It is relevance to the performance of the particular duty or interest on which the privilege in question is based. In the case of a newspaper article, the journalists and editors can choose what story to write, and their own choice in part determines what is relevant.

86. But even in the defence of qualified privilege, the House of Lords has held that the inclusion of irrelevant material goes only to the question of malice (which in defamation normally means what a person actually knows or believes), and that the court should be slow to draw inferences from the inclusion of irrelevant matters. In *Horrocks v Lowe* [1975] AC 135, at pp150-1, Lord Diplock said:

> "The freedom of speech protected by the law of qualified privilege may be availed of by all sorts and conditions of men. In affording to them immunity from suit if they have acted in good faith in compliance with a legal or moral duty or in protection of a legitimate interest the law must take them as it finds them. In ordinary life it is rare indeed for people to form their beliefs by a process of logical deduction from facts

> ascertained by a rigorous search for all available evidence and a judicious assessment of its probative value. In greater or in less degree according to their temperaments, their training, their intelligence, they are swayed by prejudice, rely on intuition instead of reasoning, leap to conclusions on inadequate evidence and fail to recognise the cogency of material which might cast doubt on the validity of the conclusions they reach…. As regards irrelevant matter the test is not whether it is logically relevant but whether, in all the circumstances, it can be inferred that the defendant either did not believe it to be true or, though believing it to be true, realised that it had nothing to do with the particular duty or interest on which the privilege was based, but nevertheless seized the opportunity to drag in irrelevant defamatory matter to vent his personal spite, or for some other improper motive. Here, too, judges and juries should be slow to draw this inference."

The threshold of seriousness

87. In addition to *Thomas*, where Lord Phillips set the threshold of seriousness at conduct which is "oppressive and unreasonable", there are other cases. In *Majrowski v Guy's and St Thomas's NHS Trust* [2006] UKHL 34; [2007] 1 AC 224 the claimant was gay, and complained of homophobic harassment in at the workplace, but he sued only the employer, and not the employee whose conduct was complained of. In holding that an employer could be vicariously liable Lord Nicholls said at para [30]:

> "Where … the quality of the conduct said to constitute harassment is being examined, courts … are well able to recognise the boundary between conduct which is unattractive, even unreasonable, and conduct which is oppressive and unacceptable. To cross the boundary from the regrettable to the unacceptable the gravity of the misconduct must be of an order which would sustain criminal liability under section 2."

88. Similarly, in *Conn v City of Sunderland* [2007] EWCA Civ 1492 the claimant employee claimed damages for harassment by a foreman for whom the City would have been vicariously liable. The alleged harassment was threats of violence and words of abuse. The claimant was, unknown to the foreman, on the verge of a mental breakdown. At para [12] Gage LJ said that what crosses the boundary "may well depend on the context in which the conduct occurs. What might not be harassment on the factory floor or in the barrack room might well be harassment in the hospital ward and vice versa". At para [18] Buxton LJ said:

> "Crucial to … Lord Nicholls' determination [in *Majrowski* as to the type of conduct that crosses the line into harassment is]… that the conduct concerned must be of an order that would sustain criminal liability, and not merely civil liability on some other register. … what occurred is a very long way away from anything that, in a sensible criminal regime, would lead to a prosecution, much less to a conviction. That is underlined by the fact found by the recorder that the language and actions that

> were used were used to three men, one of whom was upset by them (Mr Conn), two of them were not ... Now, against that background I do not start to see how it could be said that [the foreman] ought to have known that what he was doing amounted to a criminal course of conduct. If it was not criminal toward [the two others], and plainly a criminal prosecution in respect of them would have been bound to fail, I do not see how it could be criminal in respect of Mr Conn."

A complainant's characteristics

89. The PHA makes criminal a course of conduct by a writer who "knows or ought to know" that his course of conduct is "causing [a] person distress". It is not in dispute that, in considering whether journalists ought to know their articles amount to harassment of a person referred to, the court is entitled to, and should, consider the characteristics of that person which are known to the journalist. The test of what a journalist ought to know for the purposes of the PHA is an objective one. Mr White cited the case of *Conn* above, and the words of Kennedy LJ in *Banks v Ablex Ltd* [2005] EWCA Civ 173; [2005] ICR 819 at para [26]:

> "[The Judge] assessed their personalities, which he rightly considered to be at the heart of the issues in this case. He recorded what other people had said about the claimant - that she was tough, a woman of strong character, not likely to be upset by comments or offensive language, a woman who was known to give as good as she got."

90. There are very many forms of speech which can cause a person distress. These include the publication of words that are defamatory but true. It is all the more important that the court be careful to interpret the PHA in a manner which is compatible with Art 10, where, as here, it is not alleged that any of the many journalists who wrote the words complained of were personally pursuing a course of conduct which they knew was causing distress to Ms Trimingham.

91. And it is particularly significant that Ms Trimingham is not pursuing a claim in defamation (or for misuse of private information) in respect of the central defamatory theme of the articles as they refer to her, namely her involvement in the break up of Mr Huhne's marriage. The basis of the law defamation is the public interest: unless an alleged libel is untrue, there is no wrong committed. See *Bonnard v Perryman* [1891] 2 Ch 269, 284 and Duncan & Neill on Defamation 3rd ed para 12.04.

92. In *King v Sunday Newspapers Ltd* [2010] NIQB 107 the defendant had written a series of 29 articles about the plaintiff accusing him of involvement in serious crime and disclosing allegedly private information. His claim for harassment (under legislation similar to the PHA) related not just to the allegedly private information, but to all the matters reported in the articles. The subject of the privacy complaints included a photograph, an address and information that the plaintiff (a Loyalist) had a Catholic partner. At first instance Weatherup J held that there was a course of conduct targeted at the plaintiff which had, and was calculated to have, the effect of causing alarm and distress to the plaintiff. The issue was whether the articles amounted to reasonable conduct: para [42]. The judge held that they did amount to reasonable

conduct, notwithstanding inaccuracies and the inclusion of private information, because the truth of the central theme of the articles was not an issue. The Court of Appeal held at [2011] NICA 8 Girvan LJ said:

> "[38] Particularly in the light of the fact that the appellant declined to institute defamation proceedings to challenge the correctness of the thrust of the robust allegations of serious criminality made in the articles we conclude that the judge was correct to conclude that the appellant had not made out a case of harassment.
>
> [39] We have differed from the judge on the question whether the respondent was wrong to have published details of the identity of the partner and the photograph of the partner. To that limited extent we allow the appeal. While we have differed from the judge's reasoning in deciding to prohibit a publication of the religion of the partner we do not differ from him in the result. We conclude that the judge was correct in deciding that the appellant had not made out a case of harassment."

Public figures

93. There is no dispute that the status of the claimant, that is whether the claimant is a private individual (as Ms Trimingham claims she is) or a public figure (as the Defendant contends), is also relevant when considering the right of freedom of expression. Mr Huhne is plainly a public figure, with the result that aspects of his private life which affected his public functions were matters on which the public had a right to be informed.

94. Mr White cited *Porubova v. Russia* 8237/03 [2009] ECHR 1477 where the court said at para [45]:

> "The Court considers that [.... as] the head of the regional government and a member of the regional legislature respectively – they inevitably and knowingly laid themselves open to close scrutiny of their every word and deed by both journalists and the public at large ... It emphasises that the right of the public to be informed, which is an essential right in a democratic society, can even extend to aspects of the private life of public figures, particularly where politicians are concerned (see *Editions Plon v. France*, no. 58148/00, § 53, ECHR 2004 IV [information about the health of the President of France]). By reporting facts – even controversial ones – capable of contributing to a debate in a democratic society relating to politicians in the exercise of their functions, the press exercises its vital role of "watchdog" in a democracy by contributing to "impart[ing] information and ideas on matters of public interest" (see *Von Hannover v. Germany*, no. 59320/00, § 63, ECHR 2004 VI). The instant case is, in the Court's view, distinguishable from those cases in which publication of the photos or articles had the sole purpose of

> satisfying the curiosity of a particular readership regarding the details of the individual's private life".

95. Mr White submitted that Ms Trimingham is also a public figure in the relevant sense. He cited *Saaristo v Finland* 184/06 [2010] ECHR 1497. In that case the applicants had written an article entitled "*The ex-husband of [R.U.] and the person in charge of communications for the Aho campaign have found each other*". O.T. was known as a political reporter in the election-related TV debates and previously as a news reader. She was in charge of communications for the Aho campaign and, in her civilian life, was the communications manager in a specified pension insurance company and a mother. The Strasbourg court said at para [66]:

> "The Court notes that O.T. had been politically active in local politics and that her recruitment to the presidential election campaign had attracted political interest. Even though she could not be considered as a civil servant or a politician in the traditional sense of the word, she was not a completely private person either. Due to her function in the presidential election campaign, she had been publicly promoting the goals and objectives of one of the presidential candidates by belonging to his inner circle and by being therefore visible in the media during the campaign. The Court considers that, when taking up her duties as a communications officer for one of the two presidential candidates, she must have understood that her own person would also attract public interest and that the scope of her protected private life would become somewhat more limited."

The allegations against individual journalists

96. Although the articles complained of are attributed to a large number of different journalists, 38 I am told in all, the only references to the writers or editors of the words complained of in Ms Trimingham's Particulars of Claim are:

> "9B(c) [part of the plea of harassment by the Readers' Comments]: "It would have been obvious to any reasonable person that comments of this type would cause unwarranted distress on the part of their subject Ms Trimingham.
>
> 9C: The Defendant ought reasonably to have known that the above course of conduct constituted harassment. This was particularly the case upon notification of Ms Trimingham's case by the Particulars of Claim, served on 13 August 2010, and upon the receipt of Ms Trimingham's first and then her second witness statements [on 12 July and in September 2011] (by reason of the fact that those witness statements made clear the level of distress which she was experiencing as a result of the course of conduct).
>
> 10.3 [part of the plea of damages]: Those involved in writing and approving publication of the words and photographs

complained of would have known that their publication in whole or in part was likely to constitute a breach of Ms Trimingham's privacy right and/or her statutory right."

97. Ms Trimingham makes no allegation against any individual journalist or editor of the state of mind required by PHA s.1. There is no allegation of any individual knowingly causing distress to her, or of a course of conduct by an individual which amounted to harassment, nor of any collusion between the journalists, nor any direction by the Defendant to any journalist. In *Ferguson v British Gas Trading Ltd* [2009] EWCA Civ 46; [2010] 1 WLR 785 the Court of Appeal declined to strike out an allegation of harassment against a company based on the computer-generated demands issued on behalf of the company where the claimant did not identify any individual whose state of mind she relied on. Mr White did not accept that a claim in harassment can be advanced against a company such as the Defendant on the basis of the allegations pleaded in Ms Trimingham's Particulars of Claim. In the event I have not had to make a decision on this point.

98. It is a feature of this case that it is not alleged that the Defendant has communicated directly with Ms Trimingham. In most if not all cases of alleged harassment of which there are judgments available, the defendant is said to have forced himself physically into the presence of the claimant, or to have bombarded the claimant with messages or letters of a threatening nature. That is typically what is alleged in a stalker case. And threatening letters were the substance of the complaint in *Ferguson*.

99. There are a number of cases where interim injunctions have been granted against journalists and photographers to prohibit them from door stepping, or besetting, the home of a person they wished to photograph or interview. A recent example is *AM v News Group Newspapers Ltd & Ors* [2012] EWHC 308 (QB) (23 February 2012). There is little doubt that news gathering in that way can amount to harassment. Ms Trimingham does make some limited complaint on that basis, but it is not the main substance of her complaint.

100. The Defendant has not submitted that the claim must fail on the ground the conduct complained of is in the form of publications to the world at large, which Ms Trimingham only knows about because friends and associates have referred to it in general terms, and because she has chosen to read the publications by using internet search engines and alerts. But the Defendant does take that point in relation to the Readers' Comments, on the basis that it could not reasonably have foreseen that Ms Trimingham would read or be distressed by them.

101. There is thus very little dispute of law in relation to the PHA.

THE DEFENCE TO THE CLAIM FOR HARASSMENT

102. The main points relied on in a long and detailed Defence to this part of the claim are as follows.

103. The parts of the 65 articles complained of formed only a small part of the articles, the other parts of which contained information which would have been likely to cause distress to Ms Trimingham, but of which she cannot and does not complain. Any distress or other damage which Ms Trimingham may have suffered was caused by the

fact that the articles complained of also revealed true and embarrassing facts about Ms Trimingham, namely her secret affair with a married politician by whom she had been engaged to perform a political role in a public context, in the course of which each of Mr Huhne and herself deceived respectively his wife, her civil partner and the electorate. The Defendant ought not have foreseen that the publication of the matters of which Ms Trimingham does complain would cause significant further distress.

104. Ms Trimingham's sexuality was a characteristic which she herself had made public. The words of the Defendant which are complained of are not insulting, whether they refer to her sexuality or to her appearance. While the small extracts from the Readers' Comments which Ms Trimingham has selected to complain about do include insulting comments, the Defendant has expressly disassociated itself from those comments by a statement on the website ("The views expressed in the contents … are those of our users and do not necessarily reflect the views of Mail Online"). There was no good reason for the Defendant to edit out all comments which were critical of Ms Trimingham. Further, there was no good reason for the Defendant to believe that Ms Trimingham would read the Readers' Comments.

105. Ms Morgan conducted her interview with the civil partner's sister in a proper and responsible manner, and the Defendant ought not to have known that the interview, or the other information alleged to be private about her life and upbringing, would distress Ms Trimingham. The Defendant was entitled to and did regard Ms Trimingham as a robust and tough operator who was open about her sexuality and who would not be surprised or unduly distressed by the fact that her sexuality, and the other information complained of, was published about her. She had sold many stories to the press and was willing to use information about other people's lives for her own benefit.

106. There were good stylistic and editorial reasons for the references that appeared in the articles complained of. When publishing an article on a matter about which the newspaper has written before, it is the practice to insert an identifier or tag which serves to remind the reader of previous coverage, so that they can understand the context of the new article. Thus, if Ms Trimingham had had a different past, the articles might, instead of "bisexual", have included tags such as "mother of two" or "twice divorced". "Bisexual" is factual and non-pejorative: it is not evident what other word would be more appropriate to refer to someone who is in an adulterous relationship with a man by being unfaithful to a woman.

107. In particular, it was an unusual feature of Mr Huhne's own adultery that the other party was a bisexual or lesbian. Other newspapers referred to this fact, and commented upon her appearance.

108. The Defendant did not single out or target Ms Trimingham: it referred to her only when it was publishing articles about the political career of Mr Huhne, in which she had played a critical role in conducting a secret affair with him. Ms Trimingham has not attempted to identify at what point the course of conduct she relies on amounted to harassment.

109. It was in the public interest to report that story, and to expose Mr Huhne's improper conduct in deceiving his wife and the electorate in circumstances which would affect his public responsibilities as a Minister.

110. The conduct of the Defendant was reasonable in the circumstances and within the proper margin of editorial judgement. To prevent the Defendant from publishing the photographs and words complained of, or to sanction the publications by an award of damages, would be an interference with the Art 10 rights of the Defendant which was neither necessary nor proportionate for the protection of any rights of Ms Trimingham.

THE ISSUES

111. Subject to the point in *Ferguson* (on the liability of a corporation) there is no live issue in this case as to whether the publication of the 65 articles complained of amounts to a course of conduct. Nor is there an issue as to whether, if it was caused by the course of conduct and it was not reasonable, the distress suffered by Ms Trimingham would amount to harassment. So the principal issues in the present case are: (1) was the distress that Ms Trimingham suffered the result of the course of conduct, in the form of speech, that she complains of? (2) if so, ought the Defendant to have known that that course of conduct amounted to harassment? (3) if so, has the Defendant shown that the pursuit of that course of conduct was reasonable (in the sense defined in *Thomas*)? To both questions (1) and (2) there are subsidiary questions: was Ms Trimingham a purely private figure or not? and, either way, was she in other respects a person with a personality known to the Defendant such that it ought not to have known that the course of conduct amounted to harassment?

THE EVIDENCE FOR THE CLAIMANT

112. Ms Trimingham first informed the Defendant of her distress on 22 June 2010. Her solicitors wrote complaining that she was being door-stepped and harassed. The door stepping complaint is not pursued in this action. On 24 June 2010 her solicitors wrote complaining of the six of the articles complained of which had been published by that date. Her complaint was not of disclosure of the fact of the relationship, but of her sexuality, of reports of conversations attributed to her ‘friends’ and of descriptions of her sexual relationship with Mr Huhne, all of which are pursued in this action. She states that she has been seriously distressed, and complains that the language used was insulting and hurtful. Other occasions on which she complained of distress are referred to elsewhere in this judgement, and include, in particular her witness statements. No letter of complaint was sent to any of the individual journalists whose names appear in the by lines of the articles complained of.

113. Ms Trimingham’s first witness statement was made on 1 April 2011, about nine months after the story first broke on 20 June 2010, and six months before she advanced her case on the basis of harassment. She emphasises what she claims to be her status as a private individual. She states that she started her relationship with Mr Huhne in March 2008 and did not break up with her civil partner until October 2009. Meanwhile she had told Mr Huhne that she would leave her civil partner and, she states, he told her that he would leave his wife. They were each aware that when their relationship became known the media were likely to report the story, and they were worried about the publicity.

114. Referring to the Defendant’s publication of the wedding portrait photograph on 20 June, Ms Trimingham states that that “invaded my private life and trashed my civil partnership celebrations”. She repeated in cross-examination the allegation that the

Defendant had "trashed my civil partnership". She also complains that the publication of the wedding party photograph was an 'abuse'.

115. Ms Trimingham also complained that the wedding party photograph had been stolen from her civil partner's sister-in-law by a journalist from the *Daily Mail*. This is a regrettable part of her evidence. A journalist did interview the sister-in-law. She is Ms Morgan who gave evidence that the the sister-in-law gave the photograph to her voluntarily and without any conditions, as described in more detail below.

116. Ms Trimingham gave evidence in chief that the whole of this witness statement was true. But by the time she gave that evidence she knew that the sister was not going to give evidence. An allegation that a journalist has stolen a document is a serious allegation to make. Not only did Ms Trimingham not withdraw the allegation in her evidence in chief, but on two occasions in cross-examination she made clear that she was not withdrawing it.

117. On the morning of the second day of her evidence Ms Trimingham said that the photograph was used without her permission. When Mr White put to her that the evidence would be that the journalist was given that photograph for publication by her civil partner's sister, Ms Trimingham's next two responses were defiant:

> "Ms TRIMINGHAM: That is not what I heard at the time.
>
> Mr WHITE: That will be the evidence in the case.
>
> Ms TRIMINGHAM: Fine."

118. On the afternoon of that day Mr White cross-examined her about the allegation in her witness statement, which had formed her evidence in chief, that the photograph had been stolen. Mr White put to her that she had no first hand knowledge of that. Ms Trimingham's next two responses were again intransigent:

> "Ms TRIMINGHAM: Not first hand but I was telephoned that evening and was told that the journalist had stolen the photographs from [the sister]'s house.
>
> Mr WHITE: You persist in that allegation, do you, even though you know Miss Morgan is coming to give evidence this afternoon?
>
> Ms TRIMINGHAM: I'm just telling you what I was told."

119. Referring to the 21 June 2010 articles published by the Defendant, Ms Trimingham complains of the implication that her childhood and her parents' marital history had an impact on her own adult relationships, which she says is not the case.

120. She complains of what she calls hounding by journalists, although she does not allege in these proceedings that the journalists she complains of worked for the Defendant. But in her solicitors' letter to the Defendant of 22 June, a copy of which was sent to the Press Complaints Commission, Ms Trimingham did allege that the journalists were the Defendant's, and she cites that letter in her first witness statement.

121. Ms Trimingham stated in her first witness statement, and has repeated, that the publicity about her affair has had a detrimental effect on her personally and upon her career. Colleagues and acquaintances have referred to the coverage in her presence, not always sympathetically. And the unfavourable publicity she has received has meant that colleagues and potential clients see an association with her as creating a risk to their own reputations. In her fourth witness statement made on 9 March 2012 she enlarges upon the adverse effect of the publicity on her career.

122. Mr White cross-examined Ms Trimingham at some length on different aspects of the coverage of her affair with Mr Huhne, in addition to the words complained of, which he suggested must have been very distressing for her. She accepted that the publication of her role as adulterer was one of these, and she agreed that that was distressing. When asked how she had chosen what to complain of and what not to complain of she said on a number of occasions that she had found all of the coverage appalling, upsetting and unacceptable. She said she found all of it distressing, but had been advised on "what was fair game and what was not", but she found it all "absolutely vile". She also repeated on a number of occasions, and in different words, what she said in this passage of her evidence (emphasis original):

> "… the fact is that for *The Daily Mail*, "bisexual" is a dirty word and the fact is you have painted me as, as I say, a spiky, Doc Marten wearing sort of sexual deviant, basically … it is a pejorative word when *The Daily Mail* use it … I am upset about all these articles. You are just nitpicking around, saying which bits I have complained of and which bits I have not. I am sorry I am upset about all these articles. They are deeply offensive … The tone and tenor are appalling and if I had to complain about absolutely every single word, we would be here all day or night".

123. I also heard evidence confirming Ms Trimingham's distress, and the effect the publications complained of have had on Ms Trimingham's career, from Jane Austin, Judith Dawson and Alice Delemare.

124. Jane Austin worked as a journalist for many years and is very experienced in press relations. In a witness statement dated 13 April 2012 she said that Ms Trimingham had been deeply affected by the *Daily Mail*'s publications. Ms Trimingham had called her on 19 June 2010 to tell her that she and Mr Huhne had been "papped" (I take that to refer to being photographed by *The People*). Ms Austin understood that what upset Ms Trimingham was that the relationship had become public and that she had been papped. But Ms Austin agreed that the initial coverage of the affair "was quite expected".

125. Judith Dawson is also a journalist with many years experience. She worked with Ms Trimingham at Sky TV in 1989. Her witness statement dated 16 April 2012 was admitted as her evidence under the Civil Evidence Act, and so was not subject to cross-examination. She states that Ms Trimingham was not surprised that her relationship with Mr Huhne, a senior politician, was the subject of media scrutiny and comment. Nor was she surprised that there was some comment about of their previous relationships. Ms Dawson read the articles in *The Daily Mail* at Ms Trimingham's behest. She stated: "Carina and I often discussed the content of the Defendant's

coverage, which by midway through 2011 had gone far beyond what could have been regarded as fair comment". She describes it as "homophobic mocking". She states that the coverage has eroded Ms Trimingham's self confidence and that she has been particularly upset by references to her appearance in the form of comparison with a rugby player, Millie Tant and Rosa Klebb. Many of the articles might not have caused her much anxiety if they had been published in isolation, but it was the continued repetition of them that was so hurtful. The coverage has had an effect upon her career, because prospective employers fear that she herself may become the story, rather than being effective in projecting her principal's message.

126. Alice Delemare is the Campaigns Officer of the Electoral Reform Society. She said that Ms Trimingham did not come into work for two days after the story broke in June 2010, and was clearly distressed by the extent and the tone of the coverage. Her anxiety increased as the publications continued through September 2011, and it affected her professionally.

127. In her second witness statement made on 14 September, shortly before trial in October 2011, Ms Trimingham refers to the total of 63 articles published by that date of which she complains. She made this statement in support of her claim for aggravated damages. The statement is drafted with an implied reference to the Editors' Code: one section of the statement relates to the alleged irrelevance of the references to her sexuality, and another to the pejorative nature of the comments she complains of.

128. In her second witness statement Ms Trimingham gives an analysis of 62 articles which she states the Defendant published about the allegations made by Ms Pryce relating to the driving matter. Ms Trimingham states that of those 62 articles, she was referred to in 29, and those 29 form part of the 63 articles of which she complains. So the articles which refer to her are about half of the Defendant's total coverage, and the articles she complains of do not include all of that half in which she is referred to. She criticises Mr Andrew Pierce for the second time (she had first criticised him in her first witness statement), this time for including what she refers to as irrelevant and "salacious detail" in his article of 5 April 2011, discussed below.

129. In her second witness statement Ms Trimingham states that the Defendant's interest in her private life "has often verged on harassment". And in the next sentence she again refers to the intermittent presence of journalists and photographers outside her property, and being followed by photographers in the street. She does not allege that these were employees or agents of the Defendant, but I understand her to say that their presence is at least an indirect result of the publications by the Defendant of which she does complain.

130. In her third witness statement dated 30 September 2011, just before the start of the trial, Ms Trimingham addresses a point made in the Skeleton Argument for the Defendant prepared for that trial. She refers to the leaflet used by Mr Huhne in his general election campaign referring to his family. Ms Trimingham states that "whilst it is correct to say that I was aware of the leaflet's existence, it would be incorrect to imply that I endorsed it". She enlarged on this in cross-examination, saying:

> "I have told you about the leaflet yesterday, that I disagreed with it being sent out but it was too late. As I say, there was a

> schedule to be adhered to and by the time I knew about it, it was too late".

131. In cross-examination she accepted that Mr Huhne was defending a majority of just over 500 votes. She said that as his aide she was not dealing with his personal life, not putting him forward in a personal way at all. Nor, she said, did she deliver any of the leaflets referring to his family. She made light of the apparent misrepresentation, saying that the leaflet was "more of a biography than a portrait of a family man… part of that biography was about him having got married and having children. I am not entirely sure whether it portrays him as a committed family man or not". On this basis she declined to accept that the leaflet conveyed a false image to the electorate, and said it was only one of about thirty leaflets, and she did not set much store by it. She said she had advised against the leaflet being sent out, but only after it was too late. She had given that advice because she realised that if anything came out about their affair, it would look hypocritical. She said Mr Huhne did not have the final say about what went into the election leaflets. The scandal involving Mr Oaten was "a bit of a distant memory" since it had happened four years previously. (Mr Oaten had been the Liberal Democrat MP for the neighbouring constituency, and the scandal was about sex).

132. There was a part of the evidence that Ms Trimingham gave on the importance of the leaflet which she had to retract. On 23 April 2012, the first day on which she gave evidence, she was asked about a press cutting which stated that a number of Liberal Democrat councillors had resigned from the party in a revolt against Mr Huhne's use of a hypocritical leaflet. She responded by saying that the real reason they had left the party was that they had been deselected, "because they had been found to be up to no good". Having taken instructions overnight, on the next day Mr White challenged Ms Trimingham on this explanation. He said the true position was that only one of the councillors had been deselected, but the other two had resigned over the leaflet. She then altered her evidence to say that the other two were under threat of de-selection.

133. In her fourth witness statement made on 9 March 2012 Ms Trimingham covers the whole of her complaint as it then stood, including the allegation of harassment set out in her Particulars of Claim for the first time after the adjournment of the trial in October 2011.

134. In her fourth witness statement Ms Trimingham introduced for the first time the allegation that the publications complained of were themselves homophobic, saying: "The relentless and irrelevant homophobic comments, over many months, are not an exercise in free speech". (In her Particulars of claim she had pleaded that the article in the *Daily Mail* of 1 July 2010 "had played upon homophobic prejudice"). She states that "bisexual" is not a word she uses to characterise herself. However, she has been open with her family, friends and colleagues about having had relationships with both men and women. She goes on:

> "There is nothing extraordinary about this in this day and age. When I am in new environments, however, I choose whom I share this information with and the environment in which I share it. I am conscious that other people are homophobic, and there are times when I prefer the fact that I am "bisexual" not be the first thing that people know about me …. My complaint

> about the Defendant's constant reference to me as a "bisexual", and other related terms, is not that I object to the word or the fact that more people know about my sexuality in advance of meeting me (although the latter does irk me); it is the fact that my bisexuality has been relentlessly referred to by the *Daily Mail* and *The Mail on Sunday* in such a way as to taunt and humiliate me and to mock Chris for being in a relationship with me. It is disingenuous that the Defendant states its use of the word "bisexual" is not pejorative…".

135. In her fourth witness statement Ms Trimingham then comments in detail on four of the articles, including the one by Simon Walter on 15 May, by Amanda Platell on 29 May, by Quentin Letts on 21 September, and by Janet Street-Porter on 3 October 2011. She singles out Amanda Platell for making homophobic comments.

136. The Defendant produced documents and adduced evidence in support of what it alleges to be the robust personality which the journalists were entitled to suppose that Ms Trimingham enjoyed. The documents are in the form of references to articles published in different newspapers over Ms Trimingham's career for which she was the informant, and for which she was paid. There is no dispute that there were many such articles, but copies of the articles are in most cases no longer available, and Ms Trimingham stated in cross-examination that she could not remember any but a very few of them.

137. Ms Trimingham commented specifically on two articles that have survived. One of these, published in July 2000, related to a very famous film star and his equally famous film star girl friend. The story was that the man put his hand down the blouse of a young journalist in a hotel bar in the presence of other celebrities (but not his girl friend) and journalists. Ms Trimingham gave this story to the *Daily Star*. She explains in her witness statement:

> "I believe that … the *Daily Star* thought that even if [the film star's] privacy rights were engaged (which I doubt, given the public nature of the event), there was a public interest in exposing the fact that [the film star's] relationship, which he publicly promoted, had been undermined by his behaviour".

138. The second article on which Ms Trimingham commented specifically was one published on 17 August 2008 in the *Mail on Sunday* under the heading "Riddle of Cleggovers". It related to an interview that Mr Clegg, the leader of the Liberal Democrats, had given to a men's magazine on the number of women with whom he had slept. Ms Trimingham states that she discussed this with a former colleague of Mr Clegg, who informed her that Mr Clegg had given to him a shorter list numbering 18 women. Ms Trimingham supplied this information to the Defendant and sent an invoice to her contact at the *Mail on Sunday* which reads: "Hello Sweetie, you asked me to provide my bank details so you can pay me for the Nick Clegg 18 shags story". In her fourth witness statement she stated:

> "I found it surprising that Mr Clegg had apparently deliberately overstated the number and told … the *Mail on Sunday*. The Defendant thought it appropriate to publish this information".

139. Mr White cross-examined Ms Trimingham about a story in the Mail Online for 23 November 2008, reporting a conversation between Mr Clegg and Mr Paddick. Mr White put it to her that she thought it perfectly alright for herself to sell to a newspaper something which passed in a private conversation between two other people. She offered no explanation.

140. In cross-examination Ms Trimingham accepted that in his 2007 leadership campaign she had helped Mr Huhne manage the image portrayed of him through the press. When Mr Huhne had stated publicly that "nothing like that will emerge", he was referring to the sex scandal which had led to the resignation Mr Oaten MP.

141. Mr White asked Ms Trimingham to what newspapers she had sold stories in the past. Her first answer to that question was simply to name *The Guardian*. As is well known, *The Guardian* is not a tabloid and it does not commonly print stories about sex and other aspects of people's private lives. When Mr White said "Any others?" she said "I don't think so". But when he said "Never sold stories to *The Sun*?", she said "Yes", and offered, by way of explanation that she had forgotten about *The Sun*, and had forgotten what the stories were about. When pressed again she admitted to having sold stories to *The People* and to having been employed by them. *The Sun* and *The People* are tabloids that do commonly print stories about sex and people's private lives.

142. When Mr White asked her if, as a journalist, she regarded Facebook as one of the main tools for research for journalists she replied "You are telling me… I guess so". She offered no explanation of why, in her solicitors' letter of 22 June, she had not complained of the Defendant's use of the photograph.

MY ASSESSMENT OF MS TRIMINGHAM AND HER EVIDENCE

143. I accept the evidence of Ms Trimingham, Ms Austin, Ms Dawson and Ms Delemare that Ms Trimingham has suffered the distress she and they describe. I also accept that the adverse publicity about her affair with Mr Huhne has affected her reputation and career.

144. But the distress or other damage (including financial loss) that any claimant must prove if she is to succeed in a claim under the PHA must be distress or damage which a reasonable person in the position of the defendant knew or ought to know that she would suffer as a result of the course of conduct of which she complains. Like claimants in any other action, she must prove causation. In most harassment cases, there is only one likely cause of the distress or damage. But if there is more than one possible cause, a claimant must prove that the course of conduct complained has cause distress or damage.

145. One reason why that is important in this case is that much of what the Defendant published about Ms Trimingham's involvement in the breakdown of the marriage of Mr Huhne is defamatory matter which does not form part of her pleaded claim. So it is necessary for me to decide whether and to what extent her undoubted distress has

been caused by the publications of which she does complain in this action, and if so, to what extent the Defendant knew or ought to have known that it would so caused. Another reason why that is important is that Ms Trimingham made, both in correspondence and in her evidence, numerous complaints about being “papped” and followed by journalists who are not alleged to have been working for the Defendant, and who included journalists or photographers whose work was published in *The People.*

146. Ms Trimingham makes little attempt in her evidence to distinguish the causes of her distress. She attributes all her distress to the publication of information about her appearance and sexuality. But a reasonable person in the position of the Defendant would consider that the distress that a reasonable person in Ms Trimingham’s position would suffer would include distress at the publication of her role in the breakdown of the marriage of the father of five children who had been married to their mother for 25 years. It was only in cross-examination that Ms Trimingham stated that she felt distress about the publication of this defamatory (but true) information.

147. There are a number of respects in which I have not found Ms Trimingham to be a good or reliable witness. The following comments are made roughly in the order in which these topics are recounted in the previous section of this judgment.

148. I do not accept Ms Trimingham’s statement that the Defendant trashed her civil partnership in publishing the wedding portrait photograph. They reported on how Ms Trimingham herself had ended her civil partnership, allowing her civil partner to learn about her new relationship only after many months of deception. Apart from Ms Trimingham herself, no reader or viewer of the two articles where the wedding portrait photograph are published by the Defendant could know that the photograph was taken at the civil partnership ceremony, and even if they did know, the publication of the photograph cannot reasonably be said to “trash” anything. Ms Trimingham’s evidence on this point is seriously exaggerated, and demonstrates a lack of objectivity which undermines the reliability of her evidence.

149. Where the press report the break up through adultery of the marriage of a Cabinet Minister a court should be slow to decide that information about the other woman which is included in the articles is irrelevant. Ms Trimingham asserts that the information she complains of is irrelevant, but the question is whether this information would be regarded as irrelevant by a reasonable journalist in the position of the Defendant or the writer. Given Ms Trimingham’s own history of selling stories to newspapers, I am reluctant to accept that the assessment she has made in her evidence to me of what is relevant or irrelevant is an objective or candid assessment.

150. One reason for my reluctance to accept Ms Trimingham’s evidence is the poor view I have formed of her candour, given all the circumstances of this case. I do not accept that Ms Trimingham was being candid in diminishing the importance of the election leaflet about Mr Huhne’s family in the way that she did in her evidence. Ms Trimingham does not suggest that she did anything to prevent or correct the impression that she accepts that leaflet gave to the electorate. She says it was “too late” when she found out about it, “there was a schedule to be adhered to”, and “Mr Huhne did not have the final say about what went into the election leaflets”. I understood her to mean that it was too late to stop the distribution of the leaflet.

151. I do not accept any of Ms Trimingham's explanations about what happened in respect of the election leaflet in May 2010. Since Mr Huhne is not a party to these proceedings, and has not given evidence, it is not in the interests of justice that I should set out my reasons. I do not need to make any finding as to what extent, if at all, Ms Trimingham was responsible for the leaflet. Her minimising the importance of the point demonstrated her lack of objectivity in her complaints about the coverage of the scandal in the press.

152. Ms Trimingham has shown little sign of recognising how what she herself has done has given rise to the publicity she finds so unwelcome. The difficult situation she found herself in was of her own making. One reason why it is objectionable for a sexual relationship to arise between people who are already in a professional or work relationship is that there is then a greatly increased risk of conflicts arising between professional duty and personal interest. As will appear below, it was also this crossing of boundaries which led Mr Steafel to consider that Ms Trimingham's role in the story of Mr Huhne was so significant. Professionally it was her job to ensure that Mr Huhne received the best possible publicity, but it was the sexual affair on which she embarked, and which she continued to conduct, with Mr Huhne, that gave rise to the scandal.

153. Further, I was not persuaded that Ms Trimingham was being candid when she volunteered only the name of *The Guardian* when asked what papers she had sold stories to, and when she claimed to have forgotten the other newspapers, and what the stories were about. In my judgment Ms Trimingham's sale to the Defendant of the information about Mr Clegg, and the way she refers to it in the invoice and in her fourth witness statement, support the view that a reasonable person in the position of the Defendant could consider that she was herself a journalist with a robust personality. By this I mean that she was a person who saw nothing wrong in disclosing to the world at large what she considered to be newsworthy information about the sexual activities of others. That was so even if (or especially if) that information had previously been known only to a small number of people. Likewise, she saw nothing wrong in disclosing to the newspapers information conveyed to her in or from a private conversation.

154. Another example of Ms Trimingham's robustness and unreliability was her readiness to maintain that Ms Morgan had stolen the wedding party photograph, when she knew that no evidence to support that allegation would be given to the court. And I am also sceptical about her evidence that she was told "that evening" that a journalist had stolen the photograph. I do not find that her evidence is false: but I am not persuaded that it is probably true.

155. Unless the sister of Ms Trimingham's civil partner had lied to her, Ms Trimingham's evidence on this point does not fit well with Ms Morgan's unchallenged evidence that Ms Morgan had received no complaint from the sister, to whom she had spoken by telephone after the meeting at which she obtained the photograph. Ms Trimingham's persistence in the allegation of theft that she was making against Ms Morgan was all the more surprising coming as it did from a very experienced journalist. An experienced journalist can be expected to consider which of two accounts is objectively the most likely to be true. If Ms Trimingham herself was telling the truth, there was always an obvious possibility that it was Ms Morgan, rather than the sister, who was telling the truth about the photograph. Before she gave evidence Ms

Trimingham knew that the sister would not attend to give evidence, and so that Ms Morgan was not to be cross-examined. It was then very likely that the court would believe Ms Morgan's evidence (as I have), and reject the story which Ms Trimingham claims that the sister told. At the very least this demonstrates that Ms Trimingham is unable to see this case objectively. Her evidence cannot be taken at face value.

THE EVIDENCE FOR THE DEFENDANT

156. The Defendant adduced evidence from a number of the journalists who had written the words complained of, and from one of the editors. What they each wrote, and the evidence they gave is as follows. I set this out at greater length than I would otherwise have done because Ms Trimingham makes against them the very serious charge that by publishing what they wrote "the Defendant has abused its position. The relentless and irrelevant homophobic comments, over many months, are not an exercise in free speech". It is all the more serious a charge in that they are well known journalists whose reputations Ms Trimingham has put at stake in this action. Whether that charge is well founded or not is something which the readers of this judgment should be able to judge for themselves.

Andrew Pierce

157. Mr Pierce is not the author of any of the eight articles listed in the claim form. His name is first introduced into the case in the first witness statement of Ms Trimingham which was served on 12 July 2011. At the end of that statement she states that her pain "has been exacerbated by the fact that ever since my complaints and issuing proceedings, the *Daily Mail* has continued to refer to me in pejorative and unnecessarily personal terms…" She gives three examples. The third example is an article dated 22 September 2010 by Mr Pierce headed "Paddick's all set to Carry on Campaigning". He suggested that there was every indication that Mr Paddick planned to run in 2012 in the election for Mayor for London (as in fact he did). The article includes the following:

> "There are already signs he is recruiting his former campaign team. In his diary of the 2008 battle, he wrote: 'I hired a press officer with a strong character in the mistaken belief that I could tame her. I was mistaken'. This week Paddick was seen dining with that very same untamed press officer in one of the conference hotels. She is Carina Trimingham, the spiky bisexual activist for whom Energy Secretary Chris Huhne dramatically left his wife of 26 years.
>
> Huhne and she are an unlikely couple. Trimingham was in a civil partnership with her lesbian lover when the affair started.
>
> Yet Paddick knows Trimingham's value – his dinner with her this week should at least mean he ties up the gay and lesbian vote in a mayoral race".

158. That article has not been included in the Schedule of 57 further publications complained of. But in her first witness statement the complaint that Ms Trimingham made about the article was that the comments attributed to Mr Paddick about the

"Press Officer" with a strong character were not a reference by Mr Paddick to herself. So it was inaccurate as well as pejorative. She goes on to say that she had met Mr Pierce at an event soon after the publication of the article and he admitted to her that he had been wrong to suggest that she was.

159. The allegation that Mr Pierce had admitted to inaccuracy in his report prompted his first witness statement in response, which is dated 2 October 2011. This issue is now relevant to the credibility of each of Ms Trimingham and Mr Pierce. He stated that Ms Trimingham was wrong to say that what he had written was inaccurate, and wrong to say that he made any such admission.

160. He said that at an event in about March or April 2008 which he refers to as "gay hustings" he had met Ms Trimingham and she had spoken to him critically about Mr Paddick. He stated that in September 2010 he attended the Liberal Democrat Party Conference in Liverpool, and he bumped into Ms Trimingham and Mr Paddick at the Malmaison Hotel. It was that meeting and the remarks exchanged between them at it, which prompted his article of 22 September 2010. He said this was the first occasion on which he had met Ms Trimingham after her affair with Mr Huhne had become public. He said he was "gobsmacked" that she had left her civil partner for a man, as he knew her to be gay. She told him that she had fallen in love with him and she wanted to be with him (Mr Huhne) and she was typically open about this. He said that she went on to refer to Ms Pryce saying "she is the story". Mr Pierce stated that he understood she was trying to deflect attention from herself onto Ms Pryce using her skills as a Press Officer and helping other journalists to report a story about Ms Pryce, provided that she herself did not feature in it.

161. In her fourth witness statement dated 9 March 2012, Ms Trimingham complained of references to her in the Defendant's titles as "spiky" and "bisexual activist". She complained that these references were unnecessary and that her sexuality was being squeezed into stories about Mr Huhne where it was irrelevant.

162. On 13 January 2012 Ms Trimingham amended her Reply. This was in response to a re-amendment to the Defence in which the Defendant had pleaded that Ms Trimingham spoke openly about her civil partnership to Mr Pierce at the gay hustings event in 2008. In her Amended Reply she pleaded in response to this:

> "… [she] has been willing to be open about her sexuality with those she trusts and knows. … [She] had been attending a gay hustings event with her client Brian Paddick and her [civil partner]. When speaking to Mr Pierce she simply introduced [her civil partner] to him as her partner".

163. In a second statement, dated 19 March 2012, Mr Pierce disputed this. He said the introduction followed an open and friendly conversation about their respective relationships. Mr Pierce said he has always known Ms Trimingham as an openly gay or bisexual woman. The event was for the gay community and almost everybody at the occasion was gay. He asked her if she had a civil partnership because, he explains, that that is a standard question amongst gay people, and civil partnerships are a matter of great rejoicing in that community. She asked him about his relationships. Having given the matter some thought he states that he is sure that Ms

Trimingham had told him that she had entered into the civil partnership the summer before.

164. On Monday 4 April 2011 the Defendant published on page 18 of the Daily Mail a column written by Mr Pierce. It occupies about one half of the page and contains seven separate pieces. The last piece in the bottom right hand corner of the page read as follows:

> "It was a typically offensive comment from Lib Dem Chris Huhne when he compared Tory chairman Baroness Warsi to Nazi propagandist Joseph Goebbels after she warned that the alternative voting system could boost the chances of extremists such as the BNP.
>
> Perhaps Huhne was so tasteless because his bisexual girlfriend Carina Trimingham – for whom he dumped his wife of 26 years – is campaigns director for the Electoral Reform Society, which is AV's biggest cheer leader".

165. When Ms Trimingham amended her Particulars of Claim on 4 October 2011 she included that piece. It was in what was then a list of thirty nine articles from 25 September 2010 onwards of which she complained on the grounds that information in them had been published in breach of her reasonable expectation of privacy. In the case of this piece, that was because it contained information relating to her sexuality. The piece is item 21 on the list.

166. In his second witness statement Mr Pierce responded to that amendment to the Particulars of Claim, insofar as it related to his piece, as follows:

> "9. I wrote the words 'bi-sexual'. I did so because it is interesting to people and because I had no reason to believe that Carina would mind being so described. As I explained in my first statement, I had met Carina shortly after the publication of my article in 2010 about Brian Paddick and she did not complain about, or mention, my description of her as a 'spiky bisexual activist'. Knowing how forthright Carina is, she would not have hesitated to tell me if she thought the description was offensive or hurtful.
>
> 10. In my 25 to 30 years at Westminster I have never come across a situation quite like this where a cabinet minister leaves his wife and the 'other woman' is in a gay relationship, and not just that but is in a legally binding partnership with another woman. In my opinion that is extremely relevant to the reporting of the story. It is not just titillation, it is relevant context and fact. This is a situation where both the Cabinet Minister and his aide have left their wives for their affair. It is far from ordinary and is something to comment on.
>
> 11. When I refer to Carina as bi-sexual, I was referring to, and reminding readers, of that public interest story. I could have

said 'lesbian' but given what is in the public domain I said bisexual. Had Carina not entered into a civil partnership then maybe I would not have referred to it. But it was Carina's decision to enter into a civil partnership. To me this elevated her relationship from a private matter to a public statement. Her promise to her partner was not a private statement and celebration with family and friends. The act of entering a civil partnership was a public declaration of her sexuality and her commitment to another woman. Carina was in effect saying that she is out and she is proud of her sexuality and her relationship with her female partner. If they were girlfriends who had not entered into a public partnership then I might have taken the view that it was a private affair. That is not the case here. I have never ever believed that the media has a right to publicly out gay men and women who choose not to go public about their sexuality. To this day I know MP's Labour and Tory who are gay but have not come out. So even though Carina had been at the hustings with her female partner, had she not been open about her sexuality and had she not been in a civil partnership, I would not have referred to her sexuality. But the civil partnership was a legal public declaration of not just her sexuality but her love and commitment to another woman.

12. As I mentioned in my first statement I was shocked to learn Carina was in a relationship with Chris Huhne and that he was leaving his wife to be with her. The next time I met Carina I told her just how shocked I was. Carina was very good humoured and typically open about this development.

13. There was no direction from the editorship to report events or news relating to Carina Trimingham in a certain way. My column is a personal column which I write and I wrote the term 'bisexual girlfriend' because I thought it was relevant to the story. I maintain its relevance now.

14. I was aware that Carina had issued a privacy complaint against Associated Newspapers. At the time I heard Carina had sued in privacy I could not understand why. I do not believe the fact of Carina's bisexuality is private because in my experience Carina was always open about her sexuality and it was no secret that she was in a relationship with a woman…

15. In my view it is both in the public interest and the public is interested in knowing this information. When you are in a senior position as a Cabinet Minister and when you have made much of family values, and when you have campaigned on family values and the person you have an affair with is the same person who has been privy to that election strategy, that to my mind is relevant information that is in the public interest. Carina was party to the deception practiced on Chris Huhne's

wife and family, the public and electorate, and that is also important information. It is further very relevant that Carina was at the same time in a civil partnership with a woman and was deceiving her own partner. There were two women betrayed here. One was Mr Huhne's wife and the mother of his children who never ever feared that Carina was a threat to her marriage because she was in a legally binding relationship with a woman – and Carina's civil partner.

16. Whether Carina likes it or not, her status as a lesbian woman and Chris Huhne's aide made the story more interesting, more engaging to readers and a talking point. Raising legitimate discussion in this way is what the papers are supposed to do…

17. As I explained in my first statement, my experience is that Carina is an open, up front and direct woman. She is characterful, gossipy and great fun. I would also chat with Carina whenever I saw her at an event and we would have a laugh.

18. She is very far from being shy or retiring, on the contrary, in my experience she is robust and thick skinned. She has been a journalist and has worked in PR so she has seen both sides of the equation. In my experience Carina dished it out in both roles. Carina always struck me as one of us, 'a hack' at heart often seen whispering indiscretions about politicians at events. She worked in TV and she worked in the rough and tumble world of politics with the Lib Dems in the 1900's and 2000's when they were not going anywhere at all. Carina used to work for London's Diary in the London Evening Standard so was used to writing unflattering stories about public figures. When I edited The People column in The Times Carina was always the sort of person I would and did speak to at a party or even telephone, for some tit-bits about politicians she was always very game.

19. I am very surprised that Carina claims to have been offended by any of the coverage and I would not have expected it because of her character and because Carina knows the game and the business. She would have known as a journalist and a PR that she would be an integral part of the story. When she worked for TV she would have booked me and others for the GMTV sofa to discuss events just like this. Chris Huhne was in a high profile position (as one of only five Lib Dem Cabinet Ministers and one of the first since the war) and Carina was in a position of trust with Chris Huhne and his family. Carina should have known that her civil partnership status would be seen as relevant and interesting and would be reported on.

> 20. Politicians and people in the public eye are never too happy when they are subject to the sketch writers' treatment. The fact is, like it or not, Carina, is a strapping woman who towers over most men including me. She did have a spiky haircut, I often saw her in shoes which looked like Doc Martens. I don't think the coverage that Carina complains about is offensive but colourful – if a little clichéd. Knowing Carina as I do I find it hard to accept that she would have found it either surprising or truly offensive. For my part, I would not have done or written anything that I thought for a moment could be reasonably seen as harassment of Carina (or anyone else)."

167. In his first witness statement dated 2 October 2011 Mr Pierce described himself as follows. He is employed by the Defendant as a Consultant Editor and Columnist for the *Daily Mail* specialising in politics. He began working as a journalist in 1979. From 1979 to 1988 he worked in local journalism. In 1988 he joined *The Times* where he was a Parliamentary reporter, diarist and lobby correspondent. He later joined *The Telegraph* where he was Assistant Editor. He joined the *Daily Mail* in 2010. He had been a political reporter for over 20 years.

168. Mr Pierce also presents his own Sunday radio show on LBC. He formerly presented a Radio 5 programme called Sunday Service, which won two Sony Radio Academy Awards. He was short listed for "journalist of the year" in 2006 for a "What the Papers Say Award". He co-wrote a book with Matthew Parris called "Great Parliamentary Scandals". He is a seasoned broadcaster being a regular political pundit on BBC Breakfast, Radio 4, Sky News, BBC Five Live and Radio 2.

169. Mr Pierce has known Ms Trimingham for around 15 years. They have met on many occasions in the company of politicians and journalists. He described their relationship as being one of "friendly acquaintances" he would always say hello to her but the relationship was purely a professional one.

170. After verifying the truth of his witness statements, Mr Pierce responded to a question from Mr White for the Defendant. Mr White noted that Ms Trimingham had suggested that the *Daily Mail*'s coverage of her was homophobic and, in particular, that the word "bisexual" meant something more when used by the Defendant than when it is used by other newspapers.

171. Mr Pierce replied in a very emphatic manner as follows:

> "It is inconceivable I would go to work for a paper that has any homophobic ethos. I am a gay man, I have been out since I was 22. I have been a member of Stonewall, the equal rights organisation. I have marched for gay equality long before it was fashionable. In fact, in the days when certain newspapers – not the Daily Mail, … – used to refer to AIDS as the 'gay plague'. I have supported Stonewall's campaign for same sex age of consent, I supported Stonewall's campaign for gay adoption or civil partnership and I think you will find I have been mentioned more than once in the annual pink list of influential gay men and women. I would just say another thing

> about Stonewall. It campaigns for equality for gay men, lesbian women and bisexuals and I am happy to be associated with that campaign and have been for many years. And indeed Stonewall have asked me to chair some of its fringe meeting in the Conservative Party Conference and I have appeared on many panels of the BBC and across the city, talking about the need for equality in the workplace. …"

172. In cross-examination he said he would be astonished if a gay person who was described as gay was uncomfortable with that. It was suggested to him that references to Doc Marten shoes and spiky cropped hair could be a stereotype of the lesbian or bisexual woman. He said he did not agree. He said that:

> "In journalism, particularly in the middle market press which I work for, *The Daily Mail*, we tend to be guilty of lapsing into clichés. So every time you see [here he named a politician] written about, she is always 'the robust' or 'the redoubtable'. They are just clichés but it is a way of helping the reader have a physical impression of the person they are writing about".

173. He was asked about the passage in his witness statement at para 20 set out above. Mr Ryder suggested to him that he was down playing the impact of those statements which for many people are offensive. Mr Pierce replied:

> "Sketch writers… in particular paint a picture whether it is of the politician or of the politician's wife or the politician's partner and they use satire and parody and have done for many years and it is indisputable that Ms Trimingham is tall and is a statuesque figure so you would expect the sketch writer to describe her in those terms. I don't think that is offensive, I think it is descriptive … I don't see that saying somebody may wear Doc Martens which are a fashion statement, a lot of people wear Doc Martens, some of my girlfriends wear Doc Martens, they are not gay, they are not bisexual, I don't think that is making in any sense a homophobic statement, I don't accept it".

174. When challenged by Mr Ryder about the different accounts he and Ms Trimingham gave of their conversation in 2008 Mr Pierce said that in his 30 years as a journalist he had never had a Press Complaints Commission upheld against him or a libel case. He said he recalled no complaint from Ms Trimingham about what he had written.

175. In cross examination as to that meeting at the Lib Dem Conference in Liverpool in 2010, Mr Pierce said that he was explicit that Ms Trimingham was quite clear that the picture the newspaper should be seeking was not of her but of Ms Pryce. He said that Ms Trimingham wanted to know why Ms Pryce was there, and he added this:

> "Which I thought actually was a rather cruel thing to say, because [Ms Pryce] has been associated with the Lib Dems for many, many, years. This was the first time the Liberal Democrats had been in power since the war, why wouldn't she

> be at the party conference, because her boss was Vince Cable, the first Liberal Democrat Business Secretary for half a century so I was surprised by the vehemence with which she said it and the assertiveness with which she asserted that was the picture we should get. I am in no doubt … about that".

176. When asked about his piece published on 5 May 2011 Mr Pierce stated that the word "bisexual" was highly relevant. He went on to say this:

> "Can I say two things here? I am glad we are talking about this because part of Ms Trimingham's assertion is that she is not a public figure. Well, I don't accept that anyway because since Alistair Campbell, the age of the spin doctor has made the spin doctor part of the narrative, part of the political narrative. … Chris Huhne was in fact one of the negotiators in the coalition cabinet. As for the AV campaign, that made Carina Trimingham, in my view, … even more of a public figure because there were vast amounts of public money involved in the campaign, it was a key part of the coalition agreement and it was the first national referendum in this country since 1975. The Electoral Reform Society was running that campaign. Carina Trimingham was the Campaign Director for the Electoral Reform Society and if the vote in the AV referendum had been yes, the constitution of this country would have been changed in the most dramatic way, in my view, since we joined the Common Market after the last referendum. That made her even more of a public figure. … the other thing I would say… is that because she was part of a marriage break up, she was having an affair with a very senior Cabinet Minister, the fact that she left her civil partner that she was in a legally binding relationship with, her wife or civil partner, made her bisexuality entirely relevant. Now, I don't believe the word bisexual is in any way pejorative and I have listened carefully to the evidence of Ms Trimingham and often, when *The Daily Mail* has used it, it has been almost in parenthesis as a short form for describing this woman who is in a marriage, where her partner was betrayed, who was a woman. It is in the public interest, it is unusual. It is – in my 30 years in journalism, I have never known a cabinet minister leave his wife for a woman who is in a legally binding relationship with another woman. And I will say this about equality… as part of the great equality agenda gay people have to put up with, sometimes, what straight people put up with in the public domain … That is why I mentioned her sexuality and that is why the AV issue is very important…"

177. Later he said:

> "What I am saying there is when a Cabinet Minister leaves his wife for another woman, there is always a huge focus on the other women and if they happen to be married there will be a

> huge focus on that marriage. There was always going to be, with respect, even more focus because of the unusual factor that in this case, Ms Trimingham – Mr Huhne left his wife for a woman who was in a marriage with another woman. It is, of course, interesting and unusual and unique at Westminster. That is what I was making in that point."

178. I found Mr Pierce to be a candid and reliable witness. Given the assessment that I have made of the evidence of Ms Trimingham, I have no hesitation in preferring the evidence of Mr Pierce where it conflicts with that of Ms Trimingham.

Amanda Platell

179. As already noted, Amanda Platell was the author of articles published on 26 June, 25 September 2010 and 21 May and 29 May 2011.

180. Amanda Platell has been a columnist for the Defendant since 2004. Her column, Platell's People, is published every Saturday in the *Daily Mail*. She has been a journalist for 33 years. During her career she edited *The Sunday Express* and was Deputy Editor of *Today*. She has been a newspaper executive for about 20 years including being Managing Director of *The Independent*. She was also Press Secretary to William Hague MP when he was Leader of the Opposition and a candidate in the 2001 General Election.

181. Miss Platell made a witness statement dated 19 March 2012. She stated that she does not recall whether she met Ms Trimingham before June 2010, but she did know who Ms Trimingham was. She knew that Ms Trimingham had been Press Secretary to Mr Huhne when he was seeking to be elected leader of the Liberal Democrats. She knew Ms Trimingham as, as she puts it, "a very striking looking person in terms of her appearance. She is unusually tall for a woman and so in that sense she is also quite noticeable and memorable". Ms Platell states that she had seen Ms Trimingham around the political scene for a long time, including at Liberal Democrat Conferences which both women attended. Ms Platell states that before the story of the affair broke in the summer of 2010 she also knew that Ms Trimingham was in a civil partnership with a woman. She had learnt that from a colleague. She states "The civil partnership was a public confirmation of her relationship with another woman".

182. The issue of *The Daily Mail* dated 26 June 2010 includes, as part of Ms Platell's column, a 34 word piece under the heading, "Westminster Notice Board". It reads as follows:

> "Chris Huhne leaves Vicky, his pretty wife of 26 years, for the former lesbian Carina Trimingham. Now we discover he charged £1,500 on expenses to "service his old boiler". I offer no further comment".

183. Ms Platell explains in her statement this piece was published shortly after the affair became public the previous week. She states that she included the words "former lesbian" as she considered it to be an uncontroversial factual statement. She did not consider it to be private. She states that it is really very unusual for a Cabinet Minister to leave his wife of 26 years, and the mother of his children, for a woman

who was in a civil partnership with another woman. That is one of the interesting and unusual aspects of this story, she states, which adds colour to the piece. She states that she would not have thought that by including these words she would be causing Ms Trimingham any distress at all. If a woman is in a civil partnership with a woman she is openly gay. In those circumstances she would not have considered including these words distressing.

184. Ms Platell went on to state this:

> "Speaking from my experience as Press Secretary to Mr Hague I know when you are press secretary to someone you spend a large amount of time with the person you work for. If that person is a married man then (especially as a woman) you will also be aware that you are spending a lot of time with someone else's husband with whom you go through the ups and downs of politics and election campaigns. I always felt that it was hugely important that Mrs Hague felt complete confidence and trust in my working relationship with her husband. I was always conscious of that. Given my experience of the role I know that it would have been painful enough for Vicky Pryce to find out that her husband has been having an affair with one of his closest advisors. She must have felt even more betrayed and shocked because she would have believed that she could trust Ms Trimingham's relationship with her husband, given that Ms Trimingham was in a civil partnership with a woman".

185. Ms Platell wrote a piece of about 70 words in her column published in the issue of the Daily Mail dated 25 September 2010. It read as follows:

> "Chris Huhne's bisexual lover Carina Trimingham allegedly questioned his estranged wife Vicky's right to attend the Lib Dems Conference this week. For the record Mrs Huhne is a long serving member of the Party, a leading economist, and a member of Vince Cables advisory group. Ms Trimingham may seek to portray Mrs Huhne as "a woman scorned". I'm afraid, as Camilla Parker Bowles discovered, in these cases the only woman the public scorns is the callous calculating mistress".

186. As to this piece Ms Platell stated she included the words "bisexual lover" for the same reason she had included it in her previous piece. It was an uncontroversial biographical detail which added interesting colour to the article. Ms Trimingham's sexuality is also a relevant factor in the narrative of the affair. Ms Trimingham was in a relationship with a woman which she also ended by having the affair. The reference to her being "bisexual" is also part of describing to readers the characters involved in the affair. Her column is different from a news article. The pieces on her page are so short that the language she uses has to be very tight. She has very few words available in each piece to evoke an image in a reader's mind and to jog their memories as to the people she is talking about. By September 2010 the name of Ms Trimingham would not necessarily have been known to readers. Referring to her as Mr Huhne's bisexual lover connected the story with his affair in the minds of readers. It is a literary device to evoke in very few words a whole history in the mind of a

reader. She had not been made aware of any complaint about her previous article in June. It did not cross her mind that a woman who had had a civil partnership which ended with an affair with a man would consider reference to herself as bisexual to be distressing. She did not consider the word to be pejorative.

187. In her column dated 21 May 2011 Ms Platell published under the heading "Westminster Notice Board" a piece about the same length as the previous piece. The part complained of refers to the driving matter, and continues as follows:

> "… Chris Huhne is accused of a second affair while married to Vicky Pryce. That's on top of the one he had with bisexual Carina Trimingham, the woman for whom he abandoned his family. Small wonder that his wife is out for revenge and his three children no longer speak to him. When standing for office he campaigned by saying 'family matters to me so much – where would we be without them?'
>
> You're about to find out Mr Huhne".

188. In her statement Ms Platell says that she included the word in this piece for the same reasons she had included it in the previous piece. It was to remind readers who Ms Trimingham is in the story and to add colour to the piece. She was not aware that Ms Trimingham had complained about any of her articles at the time (and its not suggested she had).

189. In the issue of *The Daily Mail* dated 28 May 2011 in the section of her column headed Westminster Notice Board, Ms Platell wrote the following:

> "In a typically insensitive gesture beleaguered Chris Huhne flaunted his girlfriend in public by taking her to the Obama speech. Quite why Carina Trimingham who was previously in a civil partnership with another woman chose to go in fancy dress as Bond villainess Rosa Klebb (how else to explain that helmet hair) is anyone's guess. At least she wasn't wearing Doc Martens".

190. The piece is illustrated by two photographs, one of Ms Trimingham and the other of the actress in the role of Rosa Klebb in *From Russia with Love*.

191. In her statement Ms Platell said that in the days before writing that piece she had seen pictures of Ms Trimingham attending the Obama speech with Mr Huhne. She had noticed her haircut was a severe cut bob, and the picture made her think of Ms Trimingham's resemblance to Rosa Klebb, the famous James Bond villain. She states that she used the comparison because Rosa Klebb is an example of a woman who operates in a man's world and yet is known as a very tough character. That is how she viewed Ms Trimingham. She did not think about whether Ms Trimingham would find the comment upsetting, but had she done so, she does not believe it would have changed what she wrote. Her remark was a jokey comment and she states that she finds it hard to believe that Ms Trimingham could have seriously been distressed by it. Comparing somebody's appearance with a character or personality who readers will recognise and find amusing is an old journalistic device which is often used.

192. In her first witness statement made on 1 April 2011 Ms Trimingham commented in some detail on a number of the articles of which she complains, namely those published in the editions of the paper dated 20, 21 and 22 June 2010. She commented specifically on the article by Mr Littlejohn on 24 June and the article published on 1 July. She also commented on articles published on 23 September and the one by Andrew Pierce on 22 September. But she did not comment in that statement on any of the articles by Amanda Platell.

193. However, in her second statement made on 14 September 2011, Ms Trimingham did refer to Amanda Platell. She said this:

> "I was particularly upset by comments on my appearance in *The Daily Mail* feature entitled 'Westminster Notice Board' in which the comings and goings in Parliament are detailed. On 29 May 2011 this section commented on former Tory Treasurer Michael Ashcroft being offered a job by David Cameron; that ethnic minorities are up to 42 times more likely than white people to be stopped and searched by police; and Ed Miliband's wedding. The common theme running through these stories is that they relate to either politics or political figures. Yet I was horrified to read that the only other inclusion in this section was a feature solely about my appearance. I am neither a political figure neither is the way I look a political issue. Nonetheless Amanda chose this forum to comment that I looked like the Bond villainess Rosa Klebb, that I have 'helmet hair', and that at least I wasn't wearing Doc Martens'. The photograph chosen to illustrate the whole feature was one of me captioned with the words 'helmet'. These comments were malicious, unnecessary and had homophobic undertones. I was deeply upset by these and other comments and my confidence has been shattered as a result".

194. To this Ms Platell responded in her witness statement of 19 March 2012. Ms Platell stated that Ms Trimingham is "related to politics and is a political figure". She states that when you take a job for a man who is likely to become leader of the Liberal Democrat Party, as Mr Huhne was, then you are entering the world of politics and you yourself become part and parcel of that world. Alistair Campbell is an example of someone who was a Press Secretary and yet clearly is part of the political arena himself by virtue of his job. Ms Trimingham will enter the world of politics and it would be naïve and unrealistic of her to believe in doing so she would not become subject to scrutiny and public comment. "Westminster Notice Board" contains only three or four pieces each week. Some weeks Ms Platell comments on people's appearance and other weeks she does not. Ms Platell strongly disputes that her comments were malicious, unnecessary or had homophobic undertones.

195. Ms Platell does not agree that what she wrote was "unnecessary". Ms Trimingham was the person right in the middle of this story about the breakup of a Cabinet Minister's marriage which had then led to the police investigation relating to a driving matter. She was Mr Huhne's advisor and was squarely in the public eye and her appearance is something that will inevitably be talked about. Ms Platell stated that, if in the James Bond novel *From Russia with Love* it is suggested that Rosa Klebb is a

lesbian, then at the time of writing the article Ms Platell did not know that any such implication even existed. She resents the suggestion that she is homophobic. Ms Platell referred to Ms Trimingham not wearing Doc Martens for several reasons. Before the story of the affair with Mr Huhne broke Ms Platell remembered having attended a Liberal Democrat Conference. She was interested in finding out who Ms Trimingham was and asked the person she was with to point Ms Trimingham out to her. That person said "she's the one with the Doc Martens". Ms Platell did not in fact recall whether Ms Trimingham was wearing Doc Martens, but Ms Platell did note that she was wearing what she would describe as "quite chunky" shoes. This evidence was not challenged.

196. Rosa Klebb is a character who wore chunky shoes in which she hid a weapon. Ms Platell states that she is fond of the character Rosa Klebb because she used to be likened to her by Private Eye in the 1980s. Ms Platell was unpopular at the time because in her management role she was involved in having to make numerous redundancies. She never found the comparison distressing in any way, considering it was part of the rough and tumble of the media world, and found it quite amusing. She also referred in her column to the personal appearance of men and women, including women who are not themselves political figures.

197. In cross examination Ms Platell was challenged on her statements that Ms Trimingham was not a private person but she maintained her stance. She stressed the importance of the AV campaign and stated that in stepping into her role Ms Trimingham was stepping into the public arena. She stated that the reference to Mr Huhne spending money on his "old boiler" was not a reference to sexuality and was not offensive. She says that she has five million readers on a Saturday, which indicates she has a fairly good instinct for what people think about the world. She stated that she did not believe, and was not suggesting, that Ms Pryce was in any way homophobic. But the fact that Ms Trimingham was in a relationship with a woman would be a factor which she would expect a wife to take into account in expecting that such a person was the last woman that her husband was likely to run off with. She was pressed as to whether she knew that Ms Pryce had met Ms Trimingham. She stated that it would be highly unusual in her experience for the Press Secretary of a senior politician not to meet the wife. Ms Trimingham had not said that she had not met Ms Pryce before May 2010.

198. The following is an exchange which Ms Platell spoke in particularly passionate terms:

> "MR RYDER: Ms Platell if it assists can I make it clear that you are here relating to a few articles you wrote, the suggestion is not that you alone have committed the wrong that is being talked about, it is the cumulative effect of a number of writers, I don't wish you to think that you personally were responsible for the complaint.
>
> MS PLATELL… I am glad that this gives me the opportunity to say something very important to me. To have been cited in these particular items, to be accused of being homophobic or to have written things which are homophobic is one of the most offensive things you could say to me. … back in the 1980s I lost two of my closest gay friends to Aids, one of whom lived

> with me. In the newspaper in *The Daily Mail* only a few months ago I wrote a long piece about a man … who was openly gay and who had been one of my closest friends for 25 years. I employed him on *Today* newspaper at a time when there were virtually no gays in the press because it was a fairly homophobic place. I not only employed him, I went on to employ his partner and they remained friends of mine throughout [his life]. And the last witness you had in the stand yesterday, Andrew Pierce is my closest friend and as we all heard yesterday he has been openly gay for most of his adult life. He is part of my family, he comes on holiday with me, my parents adore him, and I find the accusation that I am anyway homophobic to be deeply disturbing and deeply hurtful."

199. Ms Platell stated that she had used the comparison with Rosa Klebb in relation to another female public figure because it is a way of describing a strong woman in the public eye. Somebody had alerted her to a comparison between herself and Rosa Klebb in *Private Eye.* She took that as a compliment because Rosa Klebb is a tough woman who is one of the few Bond girls who actually gets to kill any men. She regarded Ms Trimingham as tough too. Similarly, she said that saying someone wearing Doc Martens is like saying they are wearing bovver boots. It means they are tough. She has worn Doc Martens herself, she has owned them and she has bought a pair for a 10 year old niece without for one minute thinking she was making a reference to sexuality. She repeated that she did not regard there being any homosexual overtones in her reference either to Rosa Klebb or to Doc Marten boots.

200. Amanda Platell spoke of her experience working for William Hague in the 2 ½ years 1999 to 2001. She said that she expected the press to look into and report on her background as she would have been a character playing a role in a very public story. In that job you do have a lesser expectation of privacy, she said. You are not a private person when you are working for someone at Mr Huhne's level of politics. You step into the same arena as the politicians in such a role. You have to be as tough as nails to do the job. She said that she had never done anything quite so difficult in her life. You forego so much of your own life for it. The job is relentless and the role will have been exactly the same for Ms Trimingham. You are constantly fire fighting and under attack. You have to be able to work with the press and you have to be able to be strong with them. You must have an understanding of course, of how the press works and work with them. In her experience shy retiring people who value their private lives do not end up as Press Secretaries to senior politicians in British politics.

201. She states that she was heavily involved in the "No to AV" campaign for *The Daily Mail* and so was aware of Ms Trimingham's senior role in the high profile Yes campaign. *The Daily Mail* ran a robust campaign against the introduction of AV. It was an important role. Such and important high-profile campaign fiercely fought on all sides of the political spectrum, and which could change the British voting system fundamentally; the stakes were high. By accepting the position she did, Amanda Platell considered that Ms Trimingham put herself firmly in the public eye, and became a public figure in her own right.

202. Amanda Platell explained that the point of her column is to hold people to account in a humorous and outspoken fashion. The column includes an average of 14 to 16

individual items. She usually provides around 20 pieces to the paper on a Friday, and then the editor decides which of those 20 pieces will be included in the paper the following day. Her column may have to be sub-edited down. But the editor would never tell her that she could not say something in the sense that he does not edit her choice of words. This is because the column is an expression of her own voice. She has never been told to report on Ms Trimingham in a particular way by anyone at *The Daily Mail*.

Kirsty Walker

203. In the issue of the Daily Mail dated 27 June 2011 page 26 Ms Walker wrote a short news article under the title "Huhne tape must go to the police". She is described as "a Political Correspondent". The tape is said, in the first of the six short paragraphs of the article, to be one recording a discussion between Mr Huhne and his estranged wife. The last paragraph reads:

> "The Energy Secretary, who left Ms Pryce last year following an affair with bisexual PR Carina Trimingham, denies the allegations".

204. In the issue of the Daily Mail dated 21 September 2011 Ms Walker published another piece, with a similar by-line, under the title "Huhne: My wife refused my pleas for forgiveness". The article occupies about one quarter of page 8 of the newspaper. It includes the following:

> "Chris Huhne revealed last night that he had begged his ex wife Vicky Pryce to forgive him for leaving her for his bisexual aide, but she refused.
>
> The Energy Secretary expressed his 'enormous regret' about the break up of his 25-year marriage and admitted Ms Pryce remained very angry about the split.
>
> In a deeply personal interview at a Liberal Democrat fringe event, Mr Huhne acknowledged he had behaved badly after walking out on the mother of his three children for his mistress Carina Trimingham. …"

205. Ms Walker has been employed as Political Correspondent for *The Daily Mail* since January 2006. She is usually based in the Westminster office. She states that she has never met or spoken to Ms Trimingham and only became aware of her relationship with Mr Huhne after the story broke. She was on maternity leave from July 2010 to June 2011. The article published on 27 June was one of four she wrote on Sunday 26 June it was a follow up of a story published in *The Sunday Times* that day. There was a strong public interest in reporting the handover of the tape.

206. She included the word "bi-sexual" because she was generally aware that that term was being used to refer to Ms Trimingham, and did not think that there was anything wrong with including that information. She did not regard that word as having any negative connotation. She understood that Ms Trimingham had been open about her sexuality and it did not occur to her for a moment that that would cause any distress or

embarrassment. But the information was important in its context. Ms Pryce was evidently very upset about the circumstances of the public break up of her marriage. The fact that Ms Trimingham had been married to a woman at the time of the affair had been referred to by many other organisations. She considered this was a factor in Ms Pryce's feelings of anger and humiliation. It provided relevant context for readers. She considered that, while Ms Trimingham is not a public figure in the same way that Mr Huhne is, she had become one following the revelations about their affair.

207. In cross-examination she stated that through her contacts she had learnt that it was a factor for Ms Pryce in some of the anger that she felt about the circumstances of the break up that she had trusted Ms Trimingham, knowing she was in a civil partnership with a woman, and this compounded her shock at the unexpectedness of the affair.

208. Mr Ryder suggested to Ms Walker that a reader might well take the view that it was being suggested that the fact that he had left Ms Pryce for a bisexual aide rather than just an aide, was relevant to him asking for forgiveness. Ms Walker would not accept that that inference was there. She is a news reporter. It was simply background to the story. She did not accept that the reference was offensive, it was simply factual. It was relevant background to the way in which a criminal allegation about a Cabinet Minister had surfaced.

209. In the article published on 21 September 2011 she again used the word "bisexual" because it is important as context and information for the reader.

210. Ms Walker said there had been no complaint at the time she wrote her first article, and if there had been she would have discussed the wording of the second article with the legal department and the Political Editor.

211. She said that no one has ever told her that she should report on Ms Trimingham in any particular way. The words she used in the articles were words of her own choice, for the reasons set out above.

Jason Groves

212. On the front page of *The Daily Mail* dated 16 May 2011 there is a news article written by Jason Groves under the title "Huhne facing police probe". It continues over to page 6 where it covers about half of the page. Ms Trimingham complains about the following words which appear on the front page:

> "[Friends of Ms Pryce] say she 'is bitter' about the brutal way the Lib Dem Energy Secretary abandoned her last year in favour of his bisexual lover Carina Trimingham after 26 years of marriage".

213. In the issue of *The Daily Mail* dated 1 June 2011 on page 12 there is an article by Mr Groves, described as a Political Correspondent, under the title "New enquiry piles pressure on Huhne". It refers to his election expenses and an article about that published in *The Daily Mail* on 21 May. The piece contains about 8 paragraphs and the words of which Ms Trimingham complains are in the 5$^{th}$ paragraph as follows:

> "Mr Huhne is already being investigated by Essex Police… [he and his estranged wife] broke up acrimoniously last year after 26 years of marriage when he left her for his bisexual lover Carina Trimingham …".

214. In his witness statement dated 15 March 2012 Jason Groves states that he has been Political Correspondent to *The Daily Mail* since September 2009, and had previously worked as a Political Editor at The Sunday Express. He cannot recall whether he has ever met Ms Trimingham.

215. The article published on 16 May is a follow up from what had been published in *The Sunday Times* on 15 May. *The Sunday Times* had revealed that they had a tape relating to allegations about a driving offence and he states that he included the word "bisexual" for two reasons. First it was factual. Ms Trimingham was in a civil partnership at the time of her affair with Mr Huhne. As he saw it, that was a very public declaration of her sexuality and there was absolutely no reason to think that the information should not be included in the article. Secondly, the information was relevant because the story was about a wife feeling humiliated, and the reason for her betrayal and bitterness went to the heart of the story.

216. The reference to bisexuality is not in any way pejorative. It is a very unusual occurrence for a man to run off with a lesbian, and that is why he thought that a lot of the journalists writing for *The Daily Mail* referred to Ms Trimingham as "bisexual". It is one of the things that clicks in the public minds about a story. It is an identifier for the background of the story and it is a common journalistic tactic to refer to an unusual or interesting part of a story to jog people's minds as to what the story is about. He was not suggesting that her sexuality was either good or bad, but that it was simply an unusual aspect of the story.

217. The story in the article published on 1 June 2011 had come in late on the Press Association wire. It included the reference to "bisexual" for the same reason as in the earlier article. He considered it may well have been part of the reason why Ms Pryce felt so embittered. He was not disclosing Ms Trimingham's sexuality. She had a public ceremony when entering into her civil partnership. He stated that no one had ever told him he should report on Ms Trimingham in any particular way. He chose his own words for the reasons given above. Mr Groves had been in court while the other witnesses for the Defendant gave evidence. So Mr Ryder took the cross-examination shortly. Mr Groves did not accept that the word "bisexual" was irrelevant.

Jon Steafel

218. Mr Steafel is the Deputy Editor of *The Daily Mail*. He has worked for that paper for over 25 years in a number of increasingly senior capacities. As Deputy Editor he is the second most senior editorial executive on the newspaper reporting to the Editor, Paul Dacre. He is in sole charge of the newspaper when Mr Dacre is absent. There are other times when he works closely with Mr Dacre. He also works closely with the News Editor and Foreign Editor throughout the day, discussing the articles planned for the forthcoming edition, and how they will be handled. He will ask for articles to be re-written if he feels the interpretation or angle is not right or if there is a need for supplementary material, whether supplementary, comparative, or otherwise, to

provide further context and to add value. He also regards the Editors' Code of Practice as very important. Journalists are required by the Defendant to comply with that Code. It is taken into account at every stage in the compilation of the paper.

219. Mr Steafel states that the Defendant's columnists prepare their columns in a variety of ways. Some will simply submit their column for publication. Most will have conversations with one of the Senior Editors to discuss their ideas, to act as sounding boards and to contribute their thoughts. However, editors do not tell columnists what to write. Columnists are given complete freedom in the way that they write. The work submitted by columnists is carefully read before publication to ensure they do not offend against the Editors' Code or the law or the Defendant's view of good taste. Every story published in the newspaper is typically seen by a number of people prior to publication in addition to the journalist who wrote it. These include Editors on the home or foreign news desk, Night Editors, a Sub-Editor whose primary responsibility is quality control, a Chief Sub-Editor, a Senior Editor who may be the Editor or Mr Steafel or one of their Assistant Editors, and lawyers.

220. Mr Steafel had not met Ms Trimingham before the story of her affair with Mr Huhne broke in June 2010, but he was already aware of who she was. He remembered seeing her in photographs during Mr Huhne's election campaign the previous month and was aware that she had been his aide with political and media responsibilities within his campaign.

221. Mr Steafel was editing the paper on Sunday 20 June when the story of the affair was first published in *The People*. He was heavily involved in the coverage of the story by the Defendant. Mr Steafel stated in his witness statement that the revelation that a high-profile Cabinet Minister had left his wife for an aide following an adulterous affair was an important one. The day the story broke the Defendant discovered that Mr Huhne had made family values a significant element of his election campaign in the previous month's General Election. This aspect of the story was covered in *The Daily Mail* on 21 June. The significance was not simply that Mr Huhne was leaving his wife, but rather that it was the fact that he had been in an adulterous relationship having secured his place in Parliament at least in part by campaigning on a family values platform.

222. The fact that Mr Huhne's affair had been with an aide made the story even more significant. He had chosen to blur the boundaries between his professional and political responsibilities on the one hand, and his personal and family ones on the other. So too had Ms Trimingham. When Ministers have had affairs with aides, as they have done in the past, these affairs can compromise a minister's ability to do his job, and raise issues about his judgment, openness and transparency.

223. Mr Steafel considered that the background of Ms Trimingham, as the other party to the adulterous affair, was highly relevant to the story. She had deceived her own civil partner as well as deceiving Mr Huhne's wife about the nature of her relationship with Mr Huhne. They had given the impression that it was a purely professional relationship whereas it had become a sexual one. The fact that Ms Trimingham was in a civil partnership is a matter of public record. So Mr Steafel considered that reporting that fact in the context of the story of the affair with Mr Huhne necessarily meant that the Defendant was reporting that Ms Trimingham was either lesbian or

bisexual. If Ms Trimingham had been married when she was having her affair or had been in a relationship with a boyfriend, the Defendant would have reported that fact.

224. Mr Steafel explained that the various articles complained of in this case, published by the Defendant, which have included references to Ms Trimingham have arisen on a number of separate occasions. These are set out above in this judgment (para 32 above). They were published with references to Ms Trimingham because she was of particular interest with her connections to both politics and the media. If Mr Huhne had had an affair with someone who did not work with him and was not known in political and media circles, while that would have been newsworthy, there might have been less focus on the new partner than there was on Ms Trimingham. When considering the interests of Ms Trimingham, the Defendant inevitably bore in mind the fact that she was involved in the media and politics. Those who work in these fields tend to develop a certain resilience and robustness. Mr Steafel and his colleagues would have borne their professional experience in mind when preparing stories about her.

225. It was not until the end of 2010 that Mr Steafel became aware that Ms Trimingham had on occasions in the past sold tit-bits and stories to newspapers, including the Defendant. When he became aware that she had been paid as a source of gossip and information on the private lives (at least on one occasion) of politicians, it reinforced his view that she was not a vulnerable or naïve person. He considered it meant she could be regarded as more robust than an entirely private citizen who had no experience of media or politics.

226. The articles complained of included the word “bisexual” because Mr Steafel considered it helped to remind readers who Ms Trimingham was, and the background or context to the story. It is accurate and not pejorative. Mr Steafel said:

> “Whether Ms Trimingham likes it or not, it is the fact of her controversial sexual relationship with Mr Huhne that thrust her into the public eye and has made her name very well known, as she must have realised it would when she embarked on the affair. When she has been referred to in articles in this way, it is almost always because her relationship with Mr Huhne is germane to the subject matter, and, to fully understand the context, readers are reminded of how that relationship started. The inclusion is particularly important in the context of Ms Trimingham because the fact that she was in a lesbian relationship has arguably increased the hurt and humiliation suffered by Ms Pryce”.

227. Mr Steafel states that he is very surprised that a woman who has lived openly in both a gay and heterosexual relationship would find the use of the description in any way upsetting. The Defendant’s staff is made up of men and women of many different backgrounds, views and values, but he is not aware of any writer or member of the editorial staff who considered the use of the term “bisexual” would offend or distress Ms Trimingham, or still less, that it could ever be seen as unlawful harassment. It is not the practice of the Defendant to publish only flattering comments about people in the public eye. All newspapers often include colourful descriptions of people,

including descriptions of their personal appearance which are often unkind or unflattering.

228. Mr Steafel specifically did not accept that any of the articles were homophobic or reduced Ms Trimingham to a crude stereotype.

229. In cross-examination Mr Steafel distinguished between the practices and rules which applied to columnists and those which apply to reporters. Reporters report news and are not there to comment on the stories. Commentators, columnists and sketch writers have a very different role. They amplify and illuminate stories. They use language which is more colourful and which may contain comment and description some people might not like, although these are looked at carefully by editors to satisfy themselves that they are reasonable and not inappropriate.

230. In challenging that Ms Trimingham's sexuality was relevant to the articles complained of, Mr Ryder put it to Mr Steafel that, given the existence of bisexual people, then the fact that someone is in a relationship with a woman does not necessarily mean that they would not be in a relationship with a man. This was in response to Mr Steafel's previous answer that "it would be human nature to regard the risk as lower in the circumstances we have here", by way of explanation as to why Ms Pryce might have felt more confident, more comfortable that her marriage was not at risk from Ms Trimingham because Ms Trimingham was in a civil partnership with a woman.

231. Mr Steafel answered:

> "Of course that is true, but that would suggest human nature working in rather a different way than it does, which is to look at what is in front of them, look at who they are involved with and make a judgment as to what may or may not happen".

232. He was not suggesting it was worse because Ms Trimingham had been in a civil partnership, but it was more hurtful and humiliating for Ms Pryce, because it had been so unexpected for the obvious reasons. It was his view that as a close political aide to Mr Huhne, Ms Trimingham would inevitably have had contact with and been close to, or be known to, his wife and his family. That is why it was relevant to refer to Ms Trimingham as bisexual, and to repeat that reference as a reminder to readers when subsequent articles were published.

Maggie Morgan

233. Ms Morgan has for ten years been the Features Editor for Solent News and Photo Agency ("Solent"), which is based near Southampton. Before that she had been a reporter for the *Daily Express* and *Sunday Express* for four years. She has a total of 17 years experience as a journalist since obtaining a post graduate diploma in print journalism in 1993.

234. Solent works with the Defendant on a daily basis, as well as with other national newspapers and magazines. It is paid for work as it is published. Those titles also commission work from Solent, including obtaining an interview or photograph. On

Monday 21 June Ms Morgan was contacted by the Defendant and asked to obtain an interview with the civil partner's sister, and photos, for a fee which was agreed.

235. Ms Morgan describes in detail her visit to the sister, in which she introduced herself as a journalist and said she had been asked to call by a national newspaper. What she describes is a friendly meeting. She made a shorthand note, which she annexed to her statement. Ms Morgan asked if the sister had any photographs of the civil partnership ceremony which could be used in the national newspaper. The sister left the room and returned with two photographs, one of which is the wedding party photograph. It had no copyright stickers or other information on the reverse. Ms Morgan understood them to be family snaps, which were given to her willingly without any restriction being put on their use. The sister confirmed that she was happy for the photographs to be printed by the paper Ms Morgan was working for. Ms Morgan promised to return the photographs, and after taking copies she did return them that night or the next day. After that Ms Morgan had a further conversation on the telephone with the sister. That too was friendly. Neither the sister nor anyone her behalf made any complaint of the use which had been made of the photograph, nor any accusation of theft. The first Ms Morgan heard of such an allegation was in this litigation.

236. Ms Morgan gave evidence orally, but Mr Ryder stated that he had no questions for her. She was a convincing witness. I accept her evidence.

EVIDENCE OF PUBLICATIONS BY OTHER PUBLISHERS

237. Mr Steafel's evidence that, in his view, "most readers would expect Ms Trimingham to have been mentioned in all of [the] stories" which were published about Mr Huhne on the occasions listed in para 32 above. In response to this, Ms Trimingham adduced evidence in the form of witness statements from her solicitor Ms Harris. She states that:

> "The Defendant's coverage of these 'stories' gives a helpful insight into the way the Defendant has persisted to mention [Ms Trimingham] and her sexuality, where it is not actually relevant to the story".

238. The relevance of this evidence is limited. Ms Trimingham correctly points out that she is entitled to choose her defendant, and the fact that she has not sued other publishers does not mean that she accepts that their publications are all lawful. And although publications by other publishers could be relevant under HRA s.12(4)(a)(i), and could be amongst the circumstances referred to in PHA s.1(3)(c), that is not how either party has relied on this evidence.

239. The evidence is the result of detailed research carried out through the LexisNexis database of newspaper and other publications in the UK national, and some international, press. There are tables and bar charts analysing publications by the Defendant and comparing them with publications by 12 other publishers.

240. So, in relation to the Liberal Democrats' September 2010 Party Conference, the figures show a total of 69 articles, of which 8 refer to Ms Trimingham and 6 refer to her sexuality. The Defendant published 8 of the total of 69, 3 out of the 8 referring to Ms Trimingham, and 2 of the 6 referring to her sexuality. The others who had referred

to her sexuality were the publishers of *The Express*, *The Evening Standard*, *The Daily and Sunday Telegraph* and *The Times* and *The Sunday Times*.

241. The only other publisher to have referred to Ms Trimingham more than once in this context was *The Times* and *The Sunday Times*. They referred to her twice, and to her sexuality once. And as Mr White points out, those figures also show that it was only in 2 out of 8 articles that the Defendant referred to Ms Trimingham's sexuality.

242. On the topic of Ms Pryce and her marital breakdown, Ms Harris identifies a total of 28 articles. The Defendant published 9 of the 28, and of that 9, 6 referred to Ms Trimingham and her sexuality. The *Express* and the *Mirror* each published one article on the topic, and in each of those two articles there is a reference both to Ms Trimingham and to her sexuality.

243. In relation to the driving matter, Ms Harris identifies 274 articles. Of these, 50 were published by the Defendant, 37 by *The Telegraph*, 34 by *The Express*, 27 by *The Mirror* and 22 by *The Sun*. All of these publishers referred both to Ms Trimingham and to her sexuality on several occasions, but less often than the Defendant. The Defendant referred to Ms Trimingham in 19 of the 50, and to her sexuality in 17 of the 50. *The Telegraph* referred to Ms Trimingham in 16 of its 37 articles, and to her sexuality in 8. For *The Mirror's* 27 articles the corresponding figures are 6 and 5.

244. The style of the other publishers was similar to that of the Defendant. Amongst the articles attached to the witness statement of Ms Harris are the following. In the issue of *The Express* dated 20 May 2011 Paul Routledge, who is a well known journalist, wrote an article about Mr Huhne's driving matter. It included:

> "Of course, if you're a prominent Cabinet minister and you leave your wife to run off with a bisexual woman who had been in a civil partnership with a third woman, people will talk".

245. In the issue of *The Times* dated 18 May 2011 another well known journalist, Libby Purves, wrote about Mr Huhne's driving matter, including:

> "The Huhne affair raises some interesting points… Vicky Pryce … resigned an important job because of her husband's career, only to be dumped a month later for another woman's lesbian civil partner".

246. And in *The Daily Telegraph* dated 26 May 2011, in an article about the break up of the marriage of Arnold Schwarzenegger and Maria Shriver, a third well known columnist, Allison Pearson, wrote:

> "As well as Shriver, there is Vicky Pryce, estranged wife of Chris Huhne, who was once a high-flying Greek economist …. All changed when Vicky learned that her husband was having an affair with Carina Trimingham, his sometime press aide and a Doc-Martens-wearing former lesbian. Oh, Chris, Chris. Hell is a rather cosy, cheerful place compared to the wrath of a wife whose man runs off with a bisexual woman twice her size. Plus the unfortunate Ms Trimingham looks like the love child of

> Tommy Cooper and Bernard Bresslaw. Huhne was not just guilty of lousy morals, but shocking taste."

MY ASSESSMENT OF THE DEFENDANT'S WITNESSES

247. I have no reason to doubt that all of the Defendant's witnesses were giving their evidence truthfully. It follows from this and from the view that I formed of Ms Trimingham's evidence as set out above, that where her evidence conflicts with theirs, as it does in the case of Mr Pierce in particular, I reject Ms Trimingham's evidence.

FINDINGS AND DISCUSSION ON HARASSMENT

248. I shall start with the status and personality of Ms Trimingham.

249. I do not accept the first premise of Ms Trimingham's case, namely that she is a private individual. There are two reasons. First, in her professional capacity, she undertook to work for one of the leading politicians in the country in the capacity of press officer. In the words of Ms Dawson, her job was "to ensure [Mr Huhne's] views were heard and [his] policies understood". One of the challenges for a politician is to earn the trust of the electorate. Press officers are not always trusted by the electorate. They are commonly referred to as spin doctors, as Ms Trimingham was in the article dated 22 June 2010. The public had an interest in knowing whether they could trust Mr Huhne and Ms Trimingham not to deceive them. Secondly, in her private capacity, she conducted a sexual relationship with Mr Huhne which he told her would lead to him leaving his wife. She did this in conditions of secrecy which she knew were likely to give rise to publicity, or in other words, to a political scandal. The scandal may or may not be bigger than she (or Mr Huhne) had foreseen, but there was always likely to be a scandal. The public has an interest in knowing how the personal life of a leading politician, especially a Cabinet Minister, is likely to affect, or has affected, the business of government. So Ms Trimingham in her private capacity chose to take the risk of being mixed up in a political scandal, which her own conduct precipitated.

250. In the words of the Court in *Saaristo*:

> "she must have understood that her own person would also attract public interest and that the scope of her protected private life would become somewhat more limited".

251. I find, for the purposes of PHA s.1(2) (what a reasonable person in possession of the same information as the alleged harasser would know), that what the Defendant's witnesses each said that they knew about whether what they were writing amounted to harassment is what a reasonable person in possession of the same information as of each them would think. In short, I accept that none of the witnesses ought to have known that what he or she was writing amounted to harassment of Ms Trimingham.

252. That finding is not fatal to Ms Trimingham's claim in harassment, because the claim is against the Defendant, and there were many more articles complained of than those which were written by the witnesses who gave evidence. But I also find that a reasonable person in the possession of the same information as the Defendant, namely about her job and her past career as a journalist, could reasonably consider, in the words used in *Banks*, as "that she was tough, a woman of strong character, not likely

to be upset by comments or offensive language, a woman who was known to give as good as she got". She has "given" a lot in the course of this action: for example, she has persisted in her allegation of theft against Ms Morgan, and she was ready to allege that Liberal Democrat councillors who resigned had been deselected, when she later had to accept that they had not.

253. I turn next to the issue of causation. As stated above, I have accepted that Ms Trimingham has suffered the distress that she, Ms Austin, Ms Dawson and Ms Delemare describe. But I am not persuaded that that distress has been caused, or that the Defendant ought to have known that it would be caused, by the course of conduct to which Ms Trimingham limits her claims in this action. Ms Trimingham's repeated statements in cross-examination that she complained about all the articles, "about the whole thing", and that Mr White was "nitpicking" in seeking to distinguish some parts of the articles from others, gave rise to a serious obstacle in the way of my finding that her distress was caused, or that the Defendant ought to have known that it would be caused, by the particular words complained of, rather than by the defamatory words which are not part of her pleaded complaint, or by the papping and conduct by persons other than the Defendant. She gave no evidence upon which I could have distinguished the effect of the defamatory words from the effect of the offensive or insulting words she complained of, or the effect of the conduct of the Defendant, from the effect of the conduct of other persons, including, in particular *The People*.

254. A reasonable person in possession of the information available to the Defendant would think that the publication of the true but defamatory allegations about her conduct would cause that distress, and in my judgment, in so far as the conduct of the Defendant has caused her distress, that is what has caused her distress. In the circumstances, while I accept she is upset about the insulting and offensive language about her appearance, I do not accept that the Defendant ought to have known that its conduct in relation to that language would be sufficiently distressing to be considered oppressive or amount to harassment. And I do not accept that in fact it was so considered by Ms Trimingham.

255. In my judgment what the Defendant's witnesses wrote, and what Mr Steafel edited, was insulting and offensive in so far as it referred to her personal appearance and clothing. But the words "bisexual" and "lesbian" are factual words which are not normally to be understood as pejorative by a reasonable person. Of course, any word can acquire a pejorative meaning in a particular context, but in my judgment no reasonable reader of the words complained of in this case would understand them in a pejorative sense. What the Defendant has expressed hostility to is not her sexuality but her conduct.

256. It is true that dictionary definitions of the words "bisexual" and "lesbian" refer only to orientation, and not to conduct. But in the context of the articles about which Ms Trimingham complains, the reasonable reader who knew that she was living with her civil partner would understand them to refer not to Ms Trimingham's sexual orientation as such, but to her conduct in deceiving her civil partner, at the same time as Mr Huhne was deceiving his wife. If the journalists had spelt that out, they would have had to use more words, but any words that referred specifically to her conduct towards her civil partner would also have disclosed Ms Trimingham's sexuality. So using the word "bisexual" for short, did not disclose anything that the journalists would not in any event have disclosed. I do not accept that a reasonable reader (even

one who did not know about the civil partnership) would understand that the references to her sexuality meant that Defendant was saying that her conduct was attributable to, or worse because of, her sexuality. I also note that there are a number of references in the press coverage to Ms Pryce being Greek. But there is no suggestion that the fact that she is Greek has direct relevance to the events being recounted. Of course, the articles are not critical or insulting towards Ms Pryce, so there is a difference. But even if the coverage were critical or insulting towards Ms Pryce, a reasonable reader would not understand references to Ms Pryce being Greek as xenophobic, or attributing the matters in question to her national origin. Its relevance is as a detail that adds colour and interest to the story. I appreciate that unreasonable readers of the words complained of might attribute Ms Trimingham's conduct to her sexuality. But as *Redmond-Bate* established, a defendant cannot be sanctioned because of the unreasonable behaviour of those who hear or read the defendant's words, unless the defendant unreasonably provokes that behaviour. In the present case the only behaviour of third parties relied on is the Readers' Comments.

257. So in my judgment the reasonable reader would not regard the words "bisexual" and "lesbian" as offensive or insulting in relation to Ms Trimingham. But even if I am wrong about that, it would make no difference to the outcome of this case.

258. The evidence of Mr Pierce is in substance to the same effect as that of the other witnesses for the Defendant, but in a number of instances his evidence is more fully articulated. In my judgment it is not unreasonable (within the meaning of that word in the PHA) for him, or for the Defendant, to hold the view that he expressed in para 10 of his second witness statement:

> "…where a cabinet minister leaves his wife and the 'other woman' is in a gay relationship, and not just that but is in a legally binding partnership with another woman. In my opinion that is extremely relevant to the reporting of the story. It is not just titillation, it is relevant context and fact. This is a situation where both the Cabinet Minister and his aide have left their wives for their affair. It is far from ordinary and is something to comment on."

259. And as he added in cross-examination:

> "… in my 30 years in journalism, I have never known a cabinet minister leave his wife for a woman who is in a legally binding relationship with another woman. And I will say this about equality… as part of the great equality agenda gay people have to put up with, sometimes, what straight people put up with in the public domain … That is why I mentioned her sexuality…"

260. The issues of what a reasonable person in the position of the Defendant ought to know amounts to harassment (PHA s.1(1) and (2)), and whether in the particular circumstances of the case a course of conduct was reasonable (s.1(3)(c)), are closely linked in the present case.

261. Considering the question for the purposes of s.1(3)(c), if an unusual event occurs involving sexual behaviour of a public figure, and one of the participants is

homosexual, it is not of itself unreasonable for a newspaper to refer to that fact. Nor is it unreasonable to refer to those facts on as many occasions as the substance of the story is repeated and referred to explain subsequent events of public interest. And if a journalist is criticising a person for deceitful, unprofessional or immoral behaviour in a sexual and public context, it is not of itself unreasonable to refer to that person as homosexual if in fact they are, and it is their sexual conduct which is one of the factors giving rise to the newsworthy events.

262. Applying the law as I understand it to be (para 53 above), in my judgment discussion or criticism of sexual relations which arise within a pre-existing professional relationship, or of sexual relationships which involves the deception of a spouse, or a civil partner, or of others with a right not to be deceived, are matters which a reasonable person would not think would be conduct amounting to harassment, and would think was reasonable, unless there are some other circumstances which make it unreasonable.

263. One circumstance which may make such a course of conduct unreasonable is if it interferes with the Art 8 rights of the claimant. But, as I have already found, Ms Trimingham's Art 8 rights have become very limited. This is not only because, as I have held, she is not a purely private figure, but also because she herself has been open about her sexuality and her sexual relationships. Ms Trimingham said in her fourth witness statement:

> "… I have always been generally open about having had relationships with men and women. I am "out" about my relationships and my sexuality with people I am comfortable with, such as family, friends and colleagues. There is nothing extraordinary about this in this day and age…"

264. It is not for the court to express any view as to whether she is right or wrong in what she says is "nothing extraordinary in this day and age". Whether she is right, or not, is not the issue. The issue is whether it is 'unreasonable' in the interpretation which I must give to that word as it is used in the PHA s.1(3)(c) (so as to read it compatibly with the right to freedom of expression) for her critics, in particular the Defendant, repeatedly to refer to her sexuality, and on a few occasions to her appearance and other information about her, in the circumstances of this case, even if that course of conduct might "offend, shock or disturb … any sector of the population" (in the words used in *Handyside* and *Livingstone*), including Ms Trimingham herself.

265. As noted above at para 79, pluralism has long been recognised by the Strasbourg Court as one of the essential ingredients of a democracy. There are, of course, contexts in which pluralism and tolerance are themselves intolerable. And in most times, and at many places in the world, pluralism has not been regarded as a good thing. The reason is that, as has often been said, there is no public interest in the dissemination of falsehood. The same applies to the promotion of "disorder or crime" or conduct contrary to "health or morals" (in the words of Art 10(2)). And by the logical principle of non-contradiction (contradictory statements cannot both be true at the same time), if different people are saying that inconsistent things are true or right, then some of them (and possibly all of them) are saying things which are false or wrong. So pluralism requires members of society to tolerate the dissemination of information and views which they believe to be false and wrong. This can be difficult

for people to understand, especially if the subject is an important one and they are so convinced of the rightness of their views that they believe that any different view can only be the result of prejudice. Welcoming pluralism cannot be justified by logic. But in a society where people in fact hold inconsistent views about important matters, pluralism is a practical necessity if that society is to be free.

266. In relation to some facts and some views, there may be among an electorate such a consensus that something is false or wrong that (on the principle that there is no public interest in the dissemination of falsehood), the legislature may pass a law making it a crime to say such things. There are many historical examples of this, and some contemporary ones in the sections of the Public Order Act cited above relating to hate speech. Such laws are specifically permitted by Art 10(2). But in contemporary British society there are some varieties of sexual conduct where there is no such consensus as to what is true or right. The consequence is that the law must not penalise the expression of views that may offend, shock or disturb sectors of the population, including, of course, particular individuals (subject to the rights of those individuals under Art 8 and to the application of Art 10(2)). Where pluralism and toleration apply, the right to freedom of expression must be taken seriously.

267. I understand why Ms Trimingham states that she is offended and insulted. But even if the words she complains of are offensive or insulting, that of itself would not suffice for her to succeed. It would be a serious interference with freedom of expression if those wishing to express their own views could be silenced by, or threatened with, claims for harassment based on subjective claims by individuals that they feel offended or insulted. The test for harassment is objective. As Lord Phillips said in *Thomas* at para [35]:

> "… before press publications are capable of constituting harassment, they must be attended by some exceptional circumstance which justifies sanctions and the restriction on the freedom of expression that they involve. It is also common ground that such circumstances will be rare".

268. One circumstance which might make a course of conduct in the form of speech amount to harassment, when otherwise it would not be harassment, is when it is repeated excessively, so as, for example, to amount to taunting. This is one way in which Ms Trimingham puts her case. She submits that the repetition in 65 articles of the fact that she is bisexual, and the repetition of the words about her appearance, is so offensive and insulting as to be oppressive, and to cross the line from what is reasonable to what is unreasonable within the meaning of the PHA s.1(3)(c). At first sight that submission in relation to her sexuality appears to have some force, given the number of repetitions. Repetition of true information about a person's sexual orientation could be embraced by what Lord Phillips referred to in *Thomas* as "conduct targeted at an individual" which is "oppressive". The case in harassment in relation to her appearance is much weaker, since so few articles referred to that (see para 30 above).

269. But repetitious publications of the words complained of in this case do not fit easily into that analysis. In one sense the Defendant may be said to have targeted Ms Trimingham, because it names her. But the Defendant has not targeted her in a way that any other defendant has been alleged to harass a claimant, so far as I am aware

(e.g. sending numerous messages, making numerous demands, and following, and threatening her). This is because each time the Defendant has named Ms Trimingham it has done so in a story in which the main character is Mr Huhne. And each publication has been prompted by a particular event in Mr Huhne's public career or life, or some other newsworthy event, such as a party conference.

270. The main target of the articles complained of is Mr Huhne. Ms Trimingham is named in them only because of the very important secondary role she played in the events relating to Mr Huhne. She is not even named by the Defendant in all its articles about Mr Huhne, but only in less than half of them.

271. I would not wish to say that it is impossible that a secondary character to a story, such as Ms Trimingham is in publications about Mr Huhne, might ever succeed in a claim for harassment for speech directed to the primary character, such as Mr Huhne is. If such a case occurs, the court will have to consider it on its own facts. The initial plausibility of Ms Trimingham's claim based on repetition or taunting arises from the repetition about her being considered in isolation from the repetition and fresh reporting of stories about Mr Huhne.

272. Whether or not it would be right to say that the Defendant has targeted Ms Trimingham, I find that the words complained of are "in relation to her" (PHA s.7(3)). I also find that because each occasion on which the words complained of have been repeated is an occasion related to a newsworthy event relating to Mr Huhne, the fact of the repetition, even 65 times, does not have the effect that speech which is otherwise 'reasonable' (within the meaning of the PHA s.1(3)(c)) crosses the line, so as to amount to harassment.

273. So I turn to the question that I must ask, in accordance with the guidance set out in para 55 above: balancing all the factors that I have mentioned, in my judgment it is not necessary or proportionate for the court to make any injunction in the terms sought, or to make a finding of breach of the PHA against the Defendant.

274. In reaching that conclusion I bear in mind Mr Steafel's evidence that, since Ms Trimingham has amended her claim to allege harassment, the Defendant has decided that, pending resolution of this claim, it should exercise restraint in what it publishes about her, notwithstanding that it does not accept that her claims are good. I have no doubt that in the future, as well as following its normal procedures, the Defendant will consider the terms of this judgment in considering what they should or should not publish about her in the future.

Readers' Comments

275. So far as the Readers' Comments are concerned, I would reject the claim in respect of these for the same reasons as I reject the claim about the articles by the journalists. The comments include a number that are insulting and offensive. These are unreasonable in the ordinary meaning of that word, but not so unreasonable that it is necessary and proportionate to prohibit their publication. I note that the number of comments complained of forms a very small proportion of the total number of

comments posted by readers, and that other comments were in a different tone, some supportive of Ms Trimingham.

Newsgathering

276. In addition to her complaints about information that was published, Ms Trimingham also relied in her plea of aggravated damages on the manner in which the information about her was gathered. When she re-amended her Particulars of Claim para 9B, she introduced this allegation as part of an additional sub-paragraph (e) to her claim for harassment. It is as follows:

> "10.6 The distress caused by the fact that journalists acting on behalf of the Defendant have been prying into Ms Trimingham's private life by speaking or attempting to speak to people with whom she mixes in her private life. The Claimant is distressed, as is apparent from the articles, 'friends' (persons within Ms Trimingham's social circle) have been speaking on an anonymous basis about her private life to journalists acting on behalf of the Defendant: 10.6.1 this prying of itself interferes with her private life; 10.6.2 has caused her great concern as to who she can trust (assuming that the journalists satisfy themselves to a reasonable standard that the persons quoted anonymously were in fact members of her social circle and assuming that any information given by them was accurately quoted in the articles complained of)".

277. The re-amended para 9B(e) also included her complaint of harassment by Ms Morgan interviewing her civil partner's sister about her (Ms Trimingham's private life).

278. I have found that Ms Morgan conducted this interview with the consent of the interviewee, and on a friendly basis. It is not alleged that any of the information obtained by Ms Morgan and published by the Defendant is itself a misuse of private information. It is accepted in the Skeleton Argument for Ms Trimingham that the allegation that Ms Morgan stole a photograph (which I have rejected) would have been relevant only to damages.

279. Ms Trimingham accepted that she expected publicity about herself when her secret affair became known. There can be little publicity without journalists conducting enquiries. I do not accept that there is any basis for this complaint. On the contrary, I regard it as a further example of the exaggeration of her claim which leads me to doubt her objectivity and so the reliability of her evidence.

Information about upbringing

280. By amendment to para 10.7A of her claim for aggravated damages Ms Trimingham made a complaint about the inclusion in the article published on 21 June of intrusive details concerning Ms Trimingham's parents' divorce and describing her upbringing as being "far from stable". By her re-amendment in para 9B(f) of the Particulars of Claim she added this complaint to the list of matters relied on as harassment.

281. In my judgment this adds nothing significant to the other complaints that I have considered and which I reject, both under the heading of Harassment, and under the heading of Misuse of Private Information.

THE CLAIM FOR MISUSE OF PRIVATE INFORMATION

The law

282. The HRA s.6 requires the court as a public authority to act compatibly with Convention Rights. The Convention rights which arise for consideration in this case are the right to freedom of expression under Article 10 of the Defendant and the journalists who wrote the words complained of, and the right to respect for private and family life of Ms Trimingham which is protected by Art 8. These two Articles are set out above.

283. The exception in Art 10 relating to the protection of the rights of others and the disclosure of information received in confidence can apply only where conditions are satisfied. The restrictions must pursue a legitimate aim or aims, and be necessary in a democratic society for the protection of the legitimate aim or aims: the protection of the rights of others, or for preventing the disclosure of information received in confidence. They must also be proportionate to the end pursued, securing what is necessary for the protection of these aims and no more.

284. When considering whether the publication of information which is said to be private should be permitted, the first question the Court must answer is whether the claimant has a reasonable expectation of privacy in respect of that information such that the claimant's rights under Art 8 of the ECHR are engaged. If the answer to the first question is Yes, the second question the Court must address is what are the rights of the defendant. See e.g. *Murray v Express Newspapers Plc* [2009] Ch 481 at [24], [27], [35] and [40]. Finally the Court must weigh the rights claimed by the claimants against the rights of the other individuals concerned in accordance with the guidance in *In Re S* cited above.

285. While there will commonly be a reasonable expectation of privacy in respect of the details of a sexual or family relationship, the position is not the same in respect of the bare fact of a sexual relationship: *Lord Browne of Madingley v Associated Newspapers Ltd* [2008] QB 103, Sir Anthony Clarke MR at [59]; *Ntuli v Donald* [2010] EWCA Civ 1276; [2011] 1 WLR 294 paras [3] and [55]; *Hutcheson* paras [8] and [10]; *Goodwin v NGN Ltd* [2011] EWHC 1437 para [90].

286. In *Murray* the Court of Appeal said at [35] that the question at the first question is "a broad one" which "takes account of all the circumstances of the case". The Court of Appeal also quoted with approval Lord Hope's formulation of the test in *Campbell v MGN* [2004] 2 AC 457, [99]:

> "The question is what a reasonable person of ordinary sensibilities would feel if she was placed in the same position as the claimant and faced the same publicity"

287. Relevant considerations include the attributes of the claimant, the nature of the activity in which the claimant was engaged, the place at which it was happening, the

nature and purpose of the intrusion, the absence of consent, whether it was known or could be inferred that consent was absent and the effect (of disclosure) on the claimant (see *Murray* at [36]).

288. In considering the questions the Court must give separate consideration to different items or classes of information. See, for example, *Lord Browne of Madingley v Associated Newspapers Ltd* [2008] QB 103. In that case at para [24] Lord Phillips also explained the law where private information is known to a few other persons:

> "In *Douglas v Hello! (No 3*) [2005] EWCA Civ 595, [2006] QB 125, Lord Phillips CJ, giving the judgment of this court, said at [55]:
>
> > 'It seems to us that information will be confidential if it is available to one person (or a group of people) and not generally available to others, provided that the person (or group) who possesses the information does not intend that it should be available to others.'"

289. The law on freedom of expression and public figures set out above in relation to the PHA (paras 80 above and following) applies equally to a claim for misuse of private information. Mr White submits that the articles are clearly about a matter of public interest, namely the conduct of a Cabinet Minister and one who had campaigned for public office relying on his commitment to family values, and the consequences of his affair with Ms Trimingham as they evolved over the months, leading to his resignation and criminal charges. What is complained of, he submits, is a tiny proportion of the coverage of this story by the media as a whole, and only a part of the coverage by this Defendant. What is complained of adds little to what is in the public domain.

290. Mr White submits that Ms Trimingham can have had no reasonable expectation of privacy in respect of the information that at the time of the affair she had been living with a civil partner. A civil partnership is a public status, and in any event she had not attempted to keep it private. Negative references to appearance and sexuality may be hurtful, but are not disclosures of information which above the threshold of seriousness required to be shown for there to be a misuse of private information.

291. Ms Trimingham does not complain about the publication of the fact the affair between her and Mr Huhne. In her Particulars of Claim at para 8 Ms Trimingham identified the categories of private information which she alleged the Defendant had misused as follows.

Sexuality

292. In para 8.1 of her Particulars of Claim Ms Trimingham complains of all of the above-mentioned articles as misuse of private information by reason of the fact that they refer to her sexuality. The other five headings of misuse of private information each relate to one or more of the 8 articles originally complained of.

293. The material facts in 2010 and 2011 are that Ms Trimingham had not only entered into a civil partnership as recently as June 2007, but she was actually living with her

civil partner. But on 20 June 2010 it was revealed that she was in a sexual relationship with a man who was such a prominent politician, and who had so conducted the election campaign the previous month, that the revelation of the affair to the public at large was inevitable. Further, it is her own evidence, as well as the evidence of the journalists, that even before the revelation of her affair with Mr Huhne in June 2010, she had had relationships with other men, and those who knew her knew of her sexuality. She did not attempt to keep it private.

294. The submission that in these circumstances Ms Trimingham had a reasonable expectation of privacy as to her being bisexual seems to me to be unarguable.

295. Ms Trimingham had also married a man in 1999 and a marriage is, like the civil partnership, a public event. But it is not necessary to consider evidence from that date.

Stereotypes and homophobic prejudices

296. In para 8.2 of her Particulars of Claim she complains of three articles (June 21st, 22nd by Richard Littlejohn and 24th) alleging that these included, respectively, three, two and one "comments which attacked [her] dignity and autonomy in regard to her sexuality, particularly those which reduced her to a crude stereotype and played upon homophobic prejudice". Two of the comments relied on in the article of 21 June are the statements that Ms Trimingham wore Doc Marten boots and that she had "a boyish cropped, spiky haircut". In the article by Richard Littlejohn the same statements appear. In addition there is the statement that she looks like a cartoon character, and that if she wore a boiler suit (it is not suggested that she did) then she would look like the character Millie Trant. The statement of 24 June relied on is that she was "crop-haired" and had "set her baseball cap at" Mr Hughes.

297. Mr White submits that these statements disclose no meaningful information about her, or no information which is not already disclosed by the reference to her known bisexuality. I agree.

298. In so far as there might be a claim in respect of these statements on the basis that they are offensive or insulting, then the gist of the claim is harassment. I have already held that Ms Trimingham must fail in that claim.

299. The number and gravity of these few comments (even taken with the other statements relied on) does not come near to the threshold of seriousness necessary if a course of conduct in the form of speech is to amount to harassment of a person with the characteristics that I have found Ms Trimingham to have. A cartoon caricature, whether in a drawing or in a written sketch, is almost always a gross exaggeration. That is how the author makes the point. Reasonable people understand that style for what it is.

Sexual and relationship history

300. In para 8.3 of her Particulars of Claim Ms Trimingham complains of 4 articles containing 7 pieces of information on her sexual and relationship history, details concerning sexual intercourse; reports of private conversations which she was said to have had with persons described as "friends".

301. The complaints here are about the articles published on June 21st, ("relationships with men and women, but generally not at the same time"), 22nd, in respect of two statements about her "trail of heartbreak and betrayal", 23rd, ("split from her own female partner"), and 24th, the statements about her relationship with Mr Hughes.

302. Mr White submits that the fact that Ms Trimingham has betrayed her civil partner is apparent from other parts of the articles, and is in any event central to the story that this was a case of deception not only by Mr Huhne but also by his press officer.

303. In my judgment Ms Trimingham could have no reasonable expectation of privacy in respect of the ending of her relationship with her civil partner.

304. The statements about Mr Hughes are in a different category, since they relate to events many years ago, with a different man, and have little to do with the scandal. It is part of Ms Trimingham's complaint about these statements that they are not true, and cast her in a poor light. Neither of these points is an obstacle to a claim for misuse of private information in relation to these statements.

305. If these statements had stood alone and there had been no scandal with Mr Huhne, for example if they had appeared in a short diary piece, I would have accepted that Ms Trimingham had a reasonable expectation of privacy, and that there was little to be said by way of defence. The issue would have been whether the misuse of this information was sufficiently grave to pass the necessary threshold of seriousness. The circumstances as I have found them to be are very different. In the actual circumstances I conclude that the addition of these statements is not sufficiently serious to justify a finding that the Defendant has misused Ms Trimingham's private information.

Information concerning sexual intercourse

306. In para 8.4 of her Particulars of Claim she complains of 3 articles containing three pieces of information concerning sexual intercourse. The articles are the two on 22 June and the one on 23 June and the statements that she had said that sex with Mr Huhne had been "wild", "incredible" or "amazing".

307. Mr White submits that these statements are much less informative about any sexual intercourse than is suggested by the description given the Particulars of Claim. The publication was within the range of editorial judgment. Further, he submits that statement that she had told a friend these things before she had told her civil partner that she was in another relationship is relevant to the degree of deceit that is attributed to Ms Trimingham.

308. In my judgment these statements do come within the range of editorial judgment, given the overall nature and content of the articles in question.

Private conversations

309. In para 8.5 of her Particulars of Claim Ms Trimingham complains of 3 articles containing four reports of private conversations which she is said to have had with persons described as friends. The first three of the statements complained of are the

attributions to her “friends” of the statements about the “wild”, “incredible” or “amazing” sex. The fourth is the attribution to a friend of the story about Mr Hughes.

310. These complaints add nothing to the complaints that I have already considered and rejected in relation to these two topics.

Photographs

311. In para 8.6 of her Particulars of Claim Ms Trimingham complains of the publication of photographs concerning her civil partnership ceremony. This is a different legal basis for her complaint in respect of the statutory right to privacy in respect of the photographs under the CPDA s.85 discussed below. But it is in respect of the use by the Defendant of the same two photographs.

312. On 10 March 2008 the Defendant (at that time the proprietor of that title) had published in *The Evening Standard* an article about Mr Paddick’s campaign to be Mayor of London. It included a description of Ms Trimingham’s role, describing it as events manager, although in fact she was his press manager. The article was illustrated by a photograph of Ms Trimingham which she had given the journalist. It was a cropped copy of the wedding portrait photograph. Ms Trimingham explained in her evidence that at that time she was using that photograph for her Facebook profile page. As she states in her witness statement, there is no suggestion in that cropped photograph that it had been taken on the day of her civil partnership.

313. She also stated in her witness statements that she de-activated her Facebook profile as soon as she knew that her relationship with Mr Huhne was to be revealed, that is, as she states in her Amended Reply, immediately following notification that articles were about to be published in the media revealing her relationship with Mr Huhne. She also stated that her expectation was that her Facebook page would be viewed by her friends alone. I do not find that expectation to be a reasonable one.

314. The Defendant kept a version of the wedding portrait photograph in its picture library, and used it in June 2010. In relation to the wedding portrait and the wedding party photographs, Mr White submits that they disclose nothing about the appearance of Ms Trimingham that would not be apparent to a relatively large number of members of the public who saw her going about her business, including attending party conferences. Further, the photographs reveal very little about the appearance of Ms Trimingham which is not apparent from the photograph of her which is on the Midas website. That is a shot of her head.

315. He submits that publication in the newspaper of such a photograph cannot be capable of misuse of private information, citing *McGaughey v Sunday Newspapers Ltd* [2010] NICh 7 at par [18]. I prefer the view expressed by Nicol J in *Ferdinand v MGN Ltd* [2011] EWHC 2454 (QB). Nicol J took the view that even such an uninformative photograph could give rise to a claim for misuse of private information, although he held in that case that the claim failed. At para [54] he said:

> “The 1997 photograph is closer to the borderline. It was taken openly …. It shows nothing remarkable, but it does show the two of them together in a hotel bedroom. I am prepared to accept that this, too, was information which in principle was

> capable of protection and whose publication would, subject to the balancing test, infringe the Claimant's rights under Article 8. *Wood v Commissioner of Police for the Metropolis* [201] 1 WLR 123 confirms that an intrusion must reach a certain level of seriousness before it is even in principle capable of being protected by Article 8. The Court of Appeal concluded that the mere *taking* of photographs of demonstrators in the street did not reach that level of seriousness, but it was different when it came to the *retention* of the photographs. Laws LJ (with whom, on this issue, the other members of the Court agreed) made clear at [31] that he was not considering the *publication* of photographs…"

316. In my judgment the publication of the versions of these photographs, cropped as they were, disclosed no significant information in respect of which Ms Trimingham had a reasonable expectation of privacy.

317. Mr Bennett submitted that the photographs were out of date, as in fact they were, showing to her appearance in 2007, which is three years earlier. But Mr White noted that Ms Trimingham only removed the cropped version of the wedding portrait photograph from her Facebook page after she knew the story had broken, retaining it for the use of her friends until that date. And she had given the wedding portrait photograph to the Defendant to illustrate the publication in *The Evening Standard*.

318. In my judgment Ms Trimingham had no reasonable expectation of privacy in respect of these simple (and flattering) images in the circumstances of this case.

319. I also observe that newspapers commonly publish photographs of people taken many years before (often 20 years or more in the case of judges), even when more recent photographs are available.

THE CLAIM UNDER THE CPDA

320. This was the first claim advanced in August 2011.

321. The CPDA Chapter IV (headed "Moral Rights") Part I (headed "Copyright") includes the following under the sub-heading "Right to privacy of certain photographs and films":

> "(1) A person who for private and domestic purposes commissions the taking of a photograph … has, where copyright subsists in the resulting work, the right not to have— (a) copies of the work issued to the public; (b) the work exhibited or shown in public, ...and, except as mentioned in subsection (2), a person who does or authorises the doing of any of those acts infringes that right."

322. None of the exceptions set out in s.85(2) is relied on in this case. By s87 there is a defence of waiver or consent. By s.89(1) it is provided that

> "The rights conferred by … section 85 (right to privacy of certain photographs and films) apply in relation to the whole or any substantial part of a work".

323. In Chapter VI it is provided:

> "103(1) An infringement of a right conferred by Chapter IV (moral rights) is actionable as a breach of statutory duty owed to the person entitled to the right."

324. The explanation for the right in s.85 is that, by s.11, the copyright in any photograph normally belongs to the photographer.

325. There is no definition of "commission" in Part I of the CPDA, but in Part I under the heading "Interpretation" there is:

> "172 General provisions as to construction.
>
> (1) This Part restates and amends the law of copyright, that is, the provisions of the Copyright Act 1956, as amended.
>
> (2) A provision of this Part which corresponds to a provision of the previous law shall not be construed as departing from the previous law merely because of a change of expression.
>
> (3) Decisions under the previous law may be referred to for the purpose of establishing whether a provision of this Part departs from the previous law, or otherwise for establishing the true construction of this Part."

326. The Copyright Act 1956 s.4(3) provided, so far as relevant:

> "…, where a person commissions the taking of a photograph, … and pays or agrees to pay for it in money or money's worth, and the work is made in pursuance of that commission, the person who so commissioned the work shall be entitled to any copyright subsisting therein ..."

327. In *Apple Corps Ltd. v Cooper* [1993] F.S.R. 286 at pp299-300 Judge Micklem, sitting as a judge of the High Court held that:

> "It is difficult to say that the word "commission" in section 4(3) of the 1956 Act "implies" an obligation to pay, because the subsection itself expressly requires such an obligation, but it is not, I think, improper to suggest that it "connotes" such an obligation in the sense that it is naturally associated with payment. … What has to be shown to bring the work within the subsection is, first, that a person commissioned the taking of a photograph before the film was exposed and the negative made; secondly, that that person, the commissioner, agreed to pay for it… I think that counsel for the defendant is right when he suggests that the rationale of the requirement that there should

> be either payment before the work comes into existence or an enforceable agreement to pay in money or money's worth is that the money or money's worth is the commissioned person's *quid pro quo* for losing the copyright he would otherwise hold as owner of the material".

328. There is a definition in the CPDA Part III (Design Right) at s.263, namely "commission" means a commission for money or money's worth". In *Ultraframe (UK) Ltd v Fielding* [2003] EWCA Civ 18 at paras [27] to [33] the Court of Appeal construed s.263 by applying the words of Judge Micklem in *Apple Corps*. The designer under s.263 must have placed himself under an obligation to produce the work and the commissioning party to pay for it.

329. The editors of The Modern Law of Copyright 4th ed by Laddie Prescott and Vitoria suggest at para 13.51 that the omission of a definition of "commission" from Part I of CPDA is probably an oversight. They suggest that the meaning in s.85 is likely to be the same meaning as was given to it in the 1956 Act. The editors of Copinger and Skone James on Copyright 16th ed take a similar view at para 11-64, namely that commissioning connotes an obligation to pay, citing *Apple Corps.*

330. Mr Ryder submits that the court should not adopt the views of the text book writers. The fact that the CPDA does not include a relevant definition should be taken to mean that the legislature intended a less onerous definition than had been included in the 1956 Act. In order to protect the Art 8 right of individuals, the court should now give a more generous interpretation to the word commission. It should suffice if the subject of the photograph merely asked or gave permission to the photographer to take the photograph for the relevant private or domestic event.

331. There is force in the submission that a statutory provision which is enacted to protect privacy should, since the passing of the HRA, be construed to give effect to the Convention right. However, the law has, since the CPDA was enacted, recognised that an individual may have a cause of action for misuse of private information in respect of a photograph, and it is not necessary to give a wide interpretation to s.85 in order to achieve the purpose of the HRA.

332. Moreover, the terms of s.85 contain restrictions which make it difficult to interpret generously. For the purposes of giving effect to Art 8 rights, the requirement in s.85 that the commissioning must have been for private and domestic purposes, and that copyright subsist in the work, are of no assistance. But certain uses of images will be capable of being infringements of rights under Art 8, without the court being concerned to enquire whether they were commissioned, or whether copyright subsists: see *Peck v UK* (2003) 36 EHRR 41; [2003] EMLR 15. On the contrary, the conditions in the section could be obstacles to giving effect to Art 8 rights. And the CPDA contains no provision giving effect to Art 10 rights.

333. The law on misuse of private information is now capable of providing whatever remedy may be required by the HRA and Art 8. Mr Ryder advances an alternative claim in respect of the photographs on the basis of the law as it has developed since *Campbell v MGN* Ltd [2004] UKHL 22; [2004] 2 AC 457. If the claim cannot succeed under the law on misuse of private information, then the HRA does not require a more generous interpretation of s.85. And if the claim can succeed under the

law on misuse of private information, the court has no need to wrestle with the terms of s.85 to fulfil the positive obligation under ECHR law to give an effective remedy for a breach of a person's rights under Art 8.

334. In my judgment the conclusion that I should reach is that commissioning in s.85 means that there must be an obligation on the part of the commissioned party to produce the work and an obligation on the part of the commissioning party to pay money or money's worth.

The facts

335. Mr Allan's evidence is that he counts Ms Trimingham as a friend as well as a colleague with whom he had first worked over 10 years ago. When she told him that she had decided to enter into a civil partnership she asked if he would photograph the celebrations. He said that as a wedding present he would not charge for the work. On 16 June 2007 he spent the full day taking pictures, from the morning at their house to the ceremony and then afterwards at their reception. He retained the copyright. When Ms Trimingham told him about the use of the photographs by the Defendant he obtained payment from it at the rates offered by the Defendant for one use of each photograph on each of 21 and 22 June 2010. He was not aware of the other occasions on which his photographs were published by the Defendant, and did not ask for a fee in respect of those occasions.

336. On this evidence I find that Ms Trimingham did not commission the photographs within the meaning of s.85. As a wedding present the taking of the photographs was money's worth. Mr Allan did not undertake any obligation to give a present or to take the photographs. Ms Trimingham would have had no claim in law if he had felt that he should accept other unexpected commissions for the same day, and take no photographs of Ms Trimingham.

337. The Defendant also disputes that the photographs were taken for "private and domestic purposes". On that it seems to me that it is on weaker ground, but I need not lengthen this judgment by considering that point further.

CONCLUSION

338. For the reasons set out above, this claim will be dismissed. It is impossible to summarise all the reasons in this paragraph, and the following must not be taken to detract from the full explanation of my reasons set out above. The main reasons for my conclusion are these:

i) Ms Trimingham was not the purely private figure she claims to be. Her reasonable expectation of privacy has become limited. This is mainly by reason of her involvement with Mr Huhne, both professionally, as his press agent, and personally as his secret mistress, in circumstances where he campaigned with a leaflet to the electorate of Eastleigh about how much he valued his family. But it is also by reason of what she herself has disclosed in the past. Further, she was, as the Defendant knew, a journalist who had herself disclosed information about other people for publication in the newspapers and so was a person who ought not reasonably to be expected to be distressed when such information was published about herself.

ii) Although the fact is that the Defendant referred to Ms Trimingham's sexuality in 65 articles over about 15 months, it only did so (a) when writing about matters of public interest, mainly developments in Mr Huhne's personal life which were relevant to his public life, and (b) when Ms Trimingham and her conduct (and other information about her) were within the range of what an editor could in good faith regard as relevant to the story.

iii) The distress that she has undoubtedly suffered since 19 June 2010 is the result of the publication by the Defendant of the defamatory and true information concerning her, about which she has not made a claim in defamation, and the actions of journalists and publishers for whom the Defendant is not responsible.

iv) To the extent that the words complained of include insults and other offensive matter, insulting and offensive speech is protected by the right of freedom of expression. In this case what Ms Trimingham complains of is not so unreasonable that it is necessary or proportionate to sanction or prohibit such publications in order to protect the rights of Ms Trimingham. So the Defendant has not harassed her within the meaning of the Protection from Harassment Act 1997. It is not the case that a reasonable person in the position of the Defendant ought to have known that these articles, separately, or cumulatively, amount to harassment of Ms Trimingham.

v) I have also found that she had no reasonable expectation of privacy in relation to various items of information, including the images published on a total of 6 occasions. These were cropped versions of photographs which had been taken at and immediately before her civil partnership ceremony in June 2007, but which reveal no more information about her than the public already knew.

339. This judgment is not a licence to the Defendant to repeat the words complained of indefinitely or in any circumstances. In that respect this judgment is not like a judgment in a libel action in which the court has found that a defence of truth has been proved. If that happens anyone can normally repeat the words complained of, at least for so long as they remain true. The effect of this judgment is that the Defendant has not committed the tort of harassment so far, and is not threatening to commit it now. The judgment says nothing about the future.

340. I have emphasised that in using the word "reasonable" in this judgment I am giving it the special meaning which I have held that I am required to give it in order to interpret the PHA s1(3)(c) compatibly with the right to freedom of expression. I also emphasise that I make no finding as to whether what the Defendant has done is reasonable in any other meaning of the word reasonable. It is not appropriate for the court to express opinions on matters which are not relevant to a legal issue. Matters of style, and to a large extent what is or is not relevant, are matters within a journalist or editor's field of independence, upon which the court should express no view. The Defendant is one of the most successful news publishers in the world. So there are many readers who are not offended by what it publishes. On the other hand, there are people who are very critical of what the Defendant publishes. A court cannot express a view in the way that anyone else can. All the court can do is to find whether or not it is necessary and proportionate to sanction or prohibit a particular publication on one of the grounds specified in Art 10(2).

341. It is important that I stress that I have not reached any conclusion about the conduct of Mr Huhne in relation to any of the matters referred to in this judgment. He is not a party to this action, and he has not given evidence. It would be wrong for the court, or for any reader of this judgment, to draw any inference adverse to Mr Huhne in a case where he has not given evidence and not been represented.